

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: December 28, 2016

TO: Board of County Commissioners

FROM: John M. Salazar, Development Review Specialist Sr. *JMS*

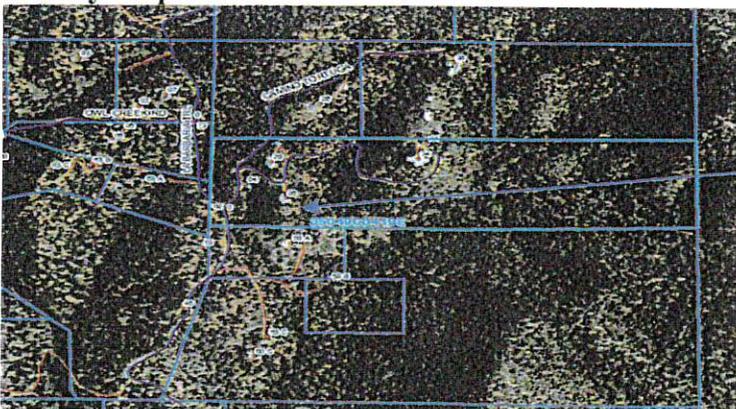
VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director *PEG*
Vicki Lucero, Building and Development Services Manager *VL*

FILE REF.: CASE # APP 16-5151 Hearts Way Ranch Appeal

ISSUE:

Richard Bank, Appellant, is appealing the Santa Fe County Planning Commission's decision to grant Heart's Way Ranch, Susan Carter, Property Owner, JenkinsGavin, Design & Development Inc., Agents, three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres. The three variances are of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%, Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence, and Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East (Commission District 4), SDA-3

Vicinity Map:



SITE LOCATION

SUMMARY:

On August 25, 2016, the Applicant presented three variances to the Hearing Officer for Public Hearing. The three variances are as follows: a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; a variance of Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and a variance of Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The Hearing Officer in support of the Application memorialized her findings of fact and conclusions of law in written order. (Exhibit 10)

On September 15, 2016, the Santa Fe County Planning Commission met and acted on this case. The decision of the Planning Commission ended in a vote with three members voting in favor of the motion to approve the request, and two members voting against the motion. Under Chapter 14, Section 14.9.7.4 of the Sustainable Land Development Code, Ordinance No. 2015-11, “[a] variance may be granted only by the majority of all the members of the Planning Commission ... where authorized by NMSA 1978, Section 3-21-8 (C).” A minimum of four members were needed to constitute a majority of all of the Planning Commission members. Therefore, the three to two vote to approve the variances did not meet the requirements of Section 14.9.7.4 and constituted a denial of the variances. A second motion was then made to reconsider the first motion, and it passed by a three to two vote. A third motion was then made to table the request until the sixth Planning Commission member was present. This motion passed by a three to two vote. (September 15, 2016, Minutes, Exhibit 8)

On October 20, 2016, with a majority present, the Planning Commission approved all three variances by a 4-2 vote. (October 20, 2016, Minutes, Exhibit 9)

The property is a 39.57 acre tract within the Rural Fringe Zoning (RUR-F) area as defined by Ordinance 2015-11, Sustainable Land Development Code (SLDC), Chapter 8, Section 8.6.3. Appendix B of the SLDC designates a retreat as a permitted use within the Rural Fringe Zoning District. The Applicants agent submitted an Application for a Site Development Plan, to request a retreat. It was discovered after submittal that the approach to the intersection exceeds grade requirements of 5% for 100 linear feet, and the grade of the driveway is 17%-21% in 3 locations. Permits were obtained in 1994, for a driveway with grades up to 14%. The approval was granted in accordance with the Extraterritorial Zoning Ordinance which allowed for grades of 15%. However, the driveway was not constructed to the approved plans.

Currently, there is a 3,651 square foot residence, two casitas —1,100 square feet each, a 1,000 square foot garage located at the main residence, a 750 square foot workshop, and a 400 square foot carport. All structures have been permitted through Santa Fe County. One of the casitas was permitted as a studio and later converted into the casita without a permit. The site contains two wells and a septic system that supports the two units.

Building and Development Services staff reviewed the Site Development Plan for compliance with pertinent SLDC requirements. The driveway grade of 5% for 100 linear feet upon an intersection and the overall driveway grade to get to the casitas and main residence exceed the required grade of 10%, and offsite roads do not meet the 20’ driving surface. La Barbaria trail is a base course surface

with a minimum width of 9 feet and a maximum width of 18 feet. The driveway that accesses the site is 14' in width with a base course surface and has pull out locations. Improvements were done for fire protection to include pull outs, and two 10,000 gallon water storage tanks with a draft hydrant that was placed at the main residence.

The Appellant states in his letter (Exhibit 1) regarding the first variance to Chapter 7, Section 7.11.6.6, which does not allow the grade of the approach at an intersection to exceed 5%, states that there are two intersections, Tortuga and Sendero de Corazon where he measured the grade at 16.5% and the intersection at Tortuga and La Barbaria Trail where he measured this grade at 15%. Regarding the second variance to Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations, the Appellant states at least a quarter of the driveway has an average grade of 17% making the distance 70% steeper than the SLDC allows. The Appellant also states regarding the third variance to Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements that due to width of the roadway not just to La Barbaria Trail but including La Barbaria Road, which one must take to get to La Barbaria Trail, there have been numerous mishaps with motorists and these steep, winding roads and additional traffic could increase the risk for more. The Appellant also states the fact that the subject property is located within an Extreme Wildland-Urban Hazard Area and that there are fire dangers inherent within such a designation.

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

1. Where the request is not contrary to public interest;
2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant; and
3. So that the spirit of the SLDC is observed and substantial justice is done.

The Property Owner addressed the variance criteria as follows:

1. Where the request is not contrary to the public interest.

The variance is requested for an existing private driveway and this is not contrary to the public interest. The driveway will be used primarily by the property owners for access to the single family residence at the top of the driveway. There will be four to six retreat guests that access the two casitas and provide overnight accommodations. In the past, full time tenants have rented the guest homes. Additionally, installing an automatic fire suppression system in the casitas and workshop will be in the public interest. The property owner implemented driveway improvements and the driveway is well constructed and in the context of the steep terrain which minimizes slope disturbance.

The request is not contrary to the public interest. La Barbaria Trail is an existing local roadway which has been serving the vicinity for several decades. As stated in the variance criteria answers above, Hearts Way Ranch will be used by the property owners and their guests to access the existing residence and casitas

2. Where owing to special conditions, a literal enforcement of the SLDC would result in unnecessary hardship to the Applicant.

Special conditions exist that the subject lot comprised of steep terrain and reconstruction of the driveway would cause scarring of the hillside. The previous owner worked in collaboration with the County Fire Marshall in effort to conform to safety standards. Reconstruction of the driveway to the SLDC standards would result in unnecessary hardship to the Applicant.

The Local Road classification calls for two 10-foot wide driving lanes. As stated above, La Barbaria Trail lies within a 20-foot easement. The width of the easement, as well as the area's exceptional steep terrain, render it impossible to widen the road. A literal enforcement of the SLDC would result in unnecessary hardship to the applicant by essentially rendering access to Hearts Way Ranch impossibility.

3. So that the Spirit of the SLDC is observed and substantial justice is done.

Maintaining the existing driveway is consistent with the SLDC as stated in Section 1.4.2.20 "Ensure that building projects are planned, designed, constructed and managed to minimize adverse environmental impacts. The driveway was constructed to minimize adverse environmental impacts, while satisfying the requirements with emergency access and life safety.

This Variance request is intended to allow for a locally owned business with requisite zoning to move forward and commence operations. As stated above, Hearts Way Ranch is proposed sober-living wellness retreat center, which is permissible use in the Rural Fringe Zoning District. The request therefore observes the spirit of the SLDC as stated in Section 1.4.2.11: Accommodate within appropriate zoning districts, regulations for protection and expansion of local small businesses, professions, culture, arts and crafts including live/work, home occupations and appropriate accessory uses in order to support a balanced, vigorous local economy.

Staff Response:

Although tenants have moved in and out of the casitas, this area is in an Extreme Wildland Fire Hazard Area. During inclement weather, and on slopes in excess of 10%, emergency access may not be possible due to the severity of the steep slopes. The structures will be utilized as a retreat center, and the use may increase tenants which can increase traffic use. Chapter 14, Section 14.9.7.4, Variance Review criteria states, "[w]here, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant." It is important to note that the road was not constructed per approved plan, but road design standards have changed since that time, and the Applicant is now requesting to change the use from residential to non-residential. Staff acknowledges that it would be difficult to widen the road width, reduce the road grade, or widen these areas without disturbing large amounts of 30% slope, and causing visual scarring.

Although the proposed use is permitted in this zoning district, all requirements of the Sustainable Land Development Code shall be met. La Barbaria Trail is a private road that does not meet the road standards of the Sustainable Land Development Code. La Barbaria trail is required to have a minimum of a 20 foot driving surface with two lanes that are 10 foot each, a 50 foot right of way,

and adequate drainage. Many locations of La Barbaria Trail are 9 feet in width at minimum and 18' in width at maximum. There are limited areas that may allow for road width to be increased due to adjacent drainage and steep slopes in excess of 30%. The grade on this offsite road meets Code requirements and the road is in good condition.

The Hearing Officer and Planning Commission, having reviewed the initial application, staff reports, and having conducted public hearings on the variance request, made the following findings of facts and conclusions of law in order to approve the variances:

1. Based on the application and the evidence and testimony presented at the public hearing as described herein, the use for which the variance is requested:
 - A. is not contrary to the public interest;
 - B. owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant; and
 - C. granting the variance will result in the spirit of the SLDC being observed and substantial justice done.
2. An extraordinary and exceptional situation has been demonstrated due to the steep terrain of the Property and the avoidance of scarring of the hillside to reconstruct the driveway, which is well constructed and contains fire protection measures including pull-out areas and two 10,000 gallon water storage tanks; it would be difficult or impossible to widen La Barbaria Trail (and prohibitively costly) or to change the grade of the intersection of La Barbaria Trail as it is an existing road constructed many years ago with inadequate easement; and denying the variance requests would hinder the spirit of the SLDC in fostering local businesses.
3. The conditions for approval of the requests are recommended as follows:
 - A. The turnouts and turnarounds of the driveway shall be maintained as approved by the County with an all-weather driving surface and with an un-obstructed vertical clearance of 13'-6"; and
 - B. The driveway shall meet a minimum 28' inside radius on curves.
 - C. The entrance gate at the top of Sendero Del Corazon shall be set to open further to allow for the increased turn and radius into the Casita B driveway.
 - D. Due to the potential access issues and remote location of this project, for life safety and property protection, the Applicant shall install Automatic Fire Protection Sprinkler systems meeting NFPA13R requirements in Casitas A & B.
 - E. The Applicant shall comply with all applicable regulations within SFC Ordinance 2001-11/EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such area.
 - F. The Applicant shall have a vegetation management plan as required by the Urban Interface Fire Code 2001-11 for approval by the County.

Fire Review Comments:

- Fire is requiring that Roads shall meet the minimum County standards for fire apparatus access roads of a minimum 20' width. Roads, turnouts and turnarounds shall be County approved and all-weather driving surface and un-obstructed vertical clearance of 13'-6" within this type of proposed development.

- The Driveway /fire access shall not exceed 11% slope and shall have a minimum 28' inside radius on curves.
- The entrance gate at the top of Sendero Del Corazon shall be set to open further to allow for the increased turn and radius into the Casita B driveway.
- Due to the potential access issues and remote location of this project, for life safety and property protection this office shall require the installation of Automatic Fire Protection Sprinkler systems meeting NFPA13R requirements in the Casitas A&B.
- This development location is rated within an extreme Wildland Hazard Area and shall comply with all applicable regulations within the SFC Ordinance 2001-11/ EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such area.
- This project shall also have a vegetation management plan as required by the Urban Interface Fire Code 2001-11. This plan shall be submitted in advance for review and approval. (Exhibit 3)

The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC), which govern this Application are the following:

Chapter 14, Section 4.5.4, Appeals of a Final Decision of the Planning Commission states:

Any party with standing may appeal a final decision of the Planning Commission to the Board. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from a decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed *nova* by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

Chapter 14, Section 14.9.7.4, Variance Review criteria states:

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

1. Where the request is not contrary to public interest;
2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant; and
3. So that the spirit of the SLDC is observed and substantial justice is done.

Chapter 14, Section 14.9.7.5 Variance Conditions of approval.

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant takes affirmative action consistent with the approval.

Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Appeal, Staff provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on December 23, 2016. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on December 26, 2016, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

This Appeal was submitted on December 5, 2016 within the thirty days allowed by Chapter 4, Section 4.5.4 of the SLDC.

RECOMMENDATION:

Staff recommends granting the appeal and overturning the Applicants approved variances of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; Chapter 7, Section 7.11.2, Table 7-13 to allow the grade of the driveway to exceed 10%; and a Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements.

The Hearing Officer and Planning Commission approved the variances because they believed that the applicants met the variance criteria. If the Board decides that the applicant has met the variance criteria they may adopt the findings of the Hearing Officer and Planning Commission.

An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may make their own findings and conclusions.

EXHIBITS:

1. Letter of Appeal
2. Chapter 4, Section 4.5.4
3. Chapter 7, Section 7.11.6.6
4. Chapter 7, Section 11.2, Table 7-13
5. Chapter 14, Section 14.9.7.1
6. Notice
7. August 25, 2016, Hearing Officer Meeting Minutes
8. September 15, 2016 Planning Commission Minutes
9. October 20, 2016 Planning Commission Minutes
10. Recommended Decision and Order from the Hearing Officer
11. Draft Order
12. Agent's Response for Property Owner



Richard M. Bank, Ph. D.
6 Owl Creek Road
Santa Fe, New Mexico 87505

TO: Ms. Penny Ellis-Green, Growth Management Director
FROM: Richard M. Bank, Ph. D.
RE: Appeal of a Decision of the Planning Commission
FILE REF.: Case No. V 16-5150 Heart's Way Ranch

Ms. Ellis-Green:

Please accept this cover letter and the attached "detail letter of request," with attachments, as part of my application to appeal a decision of the Santa Fe County Planning Commission, regarding the Case referenced above, viz., approval of three road variances requested by Heart's Way Ranch. I have submitted a SLDC Development Application, filled out as instructed by your staff, and paid the \$200 fee.

I trust you will forward to the Board of County Commissioners the attached text of my appeal (15 pages) and its attachments (7 pages), as provided in Section 4.5.4 of the Sustainable Land Development Code (SLDC).

Thank you for your prompt attention to this matter.

HAND DELIVERED

DATE: 12/5/16

BY: Richard M. Bank
Richard M. Bank

RECEIVED BY: John M. Salazar

DATE: 12-5-16





Richard M. Bank, Ph. D.
6 Owl Creek Road
Santa Fe, New Mexico 87505

Members of the Santa Fe Board of County Commissioners:

In accord with Section 4.5 of the Sustainable Land Development Code (SLDC), this document with attachments constitutes an appeal of the decision and order of the Santa Fe County Planning Commission in the matter of **Case No. V 16-5150 Heart's Way Ranch**, to wit, the approval of three variances of Chapter 7 of the SLDC, as follows: Section 7.11.6.6, to allow the grade of the approach at the intersection to exceed 5%; Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10%; Section 7.11.2, Table 7-13 Local Road Design Standards, to allow access from an offsite road (La Barbaria Trail) that does not meet Code requirements. The subject property is located at 34 Sendero de Corazon within Section 9, Township 16 North, Range 10 East (Commission District 4), SDA-3.

Standing

My wife and I live at 6 Owl Creek Road, sharing a border with the applicant's property. While this fact is probably sufficient to establish standing, permit me to elaborate. We have lived, worked, and paid taxes in Santa Fe County for more than three decades. We purchased our property just off of La Barbaria Trail in 1984, and we have lived there since 1986, in the passive solar home we built with our own hands. We took two live trees when we built, but have cut only dead wood since then. We do what we can to capture, slow and direct runoff. Our carbon footprint is quite modest: we consume on average 120 kWh/month, less than 200 gallons of propane/year, and one-half cord of wood/year in our very efficient parlor stove. We home schooled our two sons, significantly minimizing trips to town. In short, we have attempted to be good stewards of the land, and offer this appeal in that same spirit.

Let me add that my wife and I are not the only opponents to allowing the variances requested by Heart's Way Ranch. In fact, **the overwhelming majority of the property owners accessed by La Barbaria Trail are opposed.** Of those 19 property owners, 14 have taken a position on the public record, by letter to the County and/or by testimony before the Hearing Officer or the

Planning Commission. Of these 14, 11 are opposed, and just the applicant and 2 others are in favor, as shown on a map of the neighborhood (attached), and the 3 letters not yet made part of the formal record to my knowledge (also attached). While I assume full responsibility for the content of this appeal, please understand that I represent the interests of many.

Overview

When the SLDC was adopted, I can say with certainty that none of the residents living along La Barbaria Trail imagined that a commercial development of the kind proposed here would be allowed, because of the extreme fire danger, our steep and narrow roads, and the fact that there is only one way in and out. Neither did the County's own land use staff, which recommended denying the variances. Given that the land use staffers are the neutral experts with no vested interests, who look only to the law and to the land, with a studied knowledge of both, their recommendation to deny the variances should carry significant weight. Perhaps it is worth pointing out that should the Commission permit the variances and the case goes before the First Judicial District Court, these same land use experts would be called to testify against the County that hired them.

According to the testimony of the applicant, Susan Carter, she and her partner bought the subject property in order to exploit its rezoned classification as "Rural Fringe" per the SLDC (testimony before the Hearing Officer, August 25, 2016, page 10), but they completely disregarded the larger purpose and intent of that Ordinance. That larger purpose and intent, which is "intended to be the legal guide to the administration of the SLDC" (Appendix A, Part 1.5), is at least to provide a "comprehensive" and "integrated" approach to development, "designed to protect and promote the health, safety and general welfare of the present and future residents of the County" (Section 1.4.1). A *comprehensive* and *integrated* plan must consider the most complete range of factors with standards and regulations that work together. Permitted uses must be subject to safety standards; to do otherwise is to subvert the purpose and intent of the Code, and to endanger the *health, safety and general welfare* of the residents of the County.

The purpose of the road standards from which the applicant seeks relief is, in part, to "provide for the safety for both vehicular and pedestrian traffic" (Section 7.11.1.2), and to "provide safe and efficient access to property" (Section 7.11.1.5). Given that the subject property lies within an extreme wildfire hazard zone (Development Review, Santa Fe County Fire Department, July 13, 2016) "safe and efficient access" should be especially important for fire fighting and other emergency equipment. As will be more fully documented below, the grades, blind corners and narrow roadway widths, especially on La Barbaria Trail, provide access for only the smallest emergency vehicles, and very likely in extremely unsafe conditions, as emergency personnel will be trying to get in while residents are trying to get out. In fact, the conditions of La Barbaria Trail are far worse than reported by the land use staff, who nevertheless recommended denying the variances, for safety reasons.

In short, the applicant thinks she should be permitted to pick and choose among the provisions of the SLDC. She likes the Rural Fringe zoning classification, which permits the kind of retreat center she envisions, but she does not like the road safety standards. However, the Rural Fringe classification is subject to the road safety standards; they are part and parcel of the same comprehensive and integrated land use ordinance--namely, the SLDC--as she knew or should have known when she acquired the property. To seek variances of the safety standards now, and to claim "hardship" if they are not granted, is to pervert the purpose and intent of the SLDC.

Standards for Reviewing Variance Applications

Section 14.9.7 of the SLDC allows for limited variances, subject to the review criteria spelled out in Section 14.9.7.4, which reads as follows:

A variance may be granted only by a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

1. where the request is not contrary to the public interest;
2. where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

Section 3-12-8(C) includes these same criteria, but adds the requirement that the goals and policies of the comprehensive plan are implemented, which given the language of the SLDC can be included in "the spirit of the SLDC."

Note the "and" at the end of second criterion, indicating that all three requirements must be met by the applicant. Failure to satisfy any one means the variances cannot be allowed. Note also that review by the County Commission is *de novo* (SLDC, Section 4.5.4), meaning that the burden of proof again lies with the applicant.

1. Are the Variances Contrary to the Public Interest?

a. Unsafe Roads

As noted above, the road standards of SLDC Section 7.11 are about safety. What degree of danger does the applicant want the Commission to ratify? How much safety will be sacrificed by allowing the variances? The magnitude of the variance requests can provide some quantitative insight, an objective framework of sorts in which to address these questions.

The first variance, to Section 7.11.6.6, asks the Commission to allow the grade of the approach at the intersection to exceed 5%. There are actually two intersections: Sendero de Corazon at Tortuga, and Tortuga at La Barbaria Trail. The land use staff report that the intersection at Sendero de Corazon exceeds the 5% standard for 100 linear feet (testimony before the Hearing Officer, August 25, 2016, page 1). Using my homemade surveyor tools--a four-foot level, a weighted string and a ruler--I determined the grade at that intersection to be 16.5%, or more than 3 times the standard. Using the same method, I calculated the grade at Tortuga and La Barbaria Trail to be 15%, and was gratified to discover the same figure reported by Philip Wiegel, a Certified Professional Surveyor, in a report dated September 13, 2016 (attached). Thus **both intersections are 300% or more of the allowable grade, or to consider just the difference between the actual and permitted grades, 200% steeper than the SDLC allows.**

The second variance to Section 7.11.2, Table 7-13, asks the Commission to allow the overall grade of the driveway to exceed 10%. Staff reports the grade of the driveway (Sendero de Corazon) to be 17-21% in three locations, but does not offer the length of these locations (testimony before the Hearing Officer, August 25, 2016, page 2). Christopher Graeser, an attorney for opponents, states in his letter to the Hearing Officer about 1/3 of the driveway exceeds the 10% grade, and 1/3 of that is double the allowable grade, citing the engineering study accompanying the development application (sheets 6B-6D, which are too blurred on my computer to read accurately). Ms. Jenkins, for the applicant, says (without supporting citation) that approximately 20% of the driveway exceeds the 10% grade, with grades between 13% and 21% (testimony before the Planning Commission, September 15, 2016, page 29). Given these reports, it is fair to say that **at least a quarter of the driveway has a grade averaging 17%, making that distance 70% steeper than the SLDC allows.**

The third variance to Section 7.11.2, Table 7-13 Local Road Design Standards, asks the Commission to allow access from an offsite road (**La Barbaria Trail, a private road**) that does not meet Code requirements. The land use staff mistakenly reported that the grade of La Barbaria Trail meets Code requirements (testimony before the Hearing Officer, August 25, 2016, page 4). According to SLDC, Table 7-13 SDA-3, the maximum allowable grade for La Barbaria Trail is 9%. My new friend Philip Wiegel of Del Rio Surveys, Inc., surveying that part of La Barbaria Trail falling between its intersection with La Barbaria Road and Tortuga, reports that the 560 foot length of road that we in the neighborhood refer to as **the Big Hill averages "a 12% grade through a curve situation," and that "a 126 foot portion of this stretch has a slope of 14.1%"** (September 13, 2016 survey report, attached). That 126 foot stretch is almost **57% steeper than the Code permits.** The danger posed by the grade is compounded by the narrow width of the road, which the staff correctly notes lies within a **20 foot easement**, and has **an actual width of between 9 feet and 18 feet** (testimony before the Hearing Officer, August 25, 2016, page 4). The Code requires a minimum roadway width of 20 feet within a 50 foot right-of-way (Table 7- 13, SDA-3). Over the years, the Big Hill has been the site of numerous mishaps, several of which I have intimate knowledge.

Perhaps it is worth noting at this point that **La Barbaria Road (County Road 67F)**, which one must travel to reach La Barbaria Trail, **has its own share of dangers**: a steep twisting section on its south end, a long narrow section at the north end (just before the intersection with La Barbaria Trail) with a roadbed width of approximately 14 feet, and with much of the road passing through a federally designated flood plain. One consequence of this federal designation is that any efforts to widen the road must be approved by FIMA and the Army Corp of Engineers, which in turn requires a detailed Environmental Impact Statement (National Environmental Policy Act, §102(2)(c)).

b. Traffic

Many residents along La Barbaria Trail, and some farther down the canyon, along La Barbaria Road (County Road 67F) have expressed concern about increased traffic, both by letter and public testimony. **The SLDC requirement for a Traffic Impact Study was waived** for the applicant, **based on assurances that the impact would be minimal** (testimony of Ms. Vicki Lucero, Building and Development Service Manager, before the Planning Commission, September 15, 2016, page 31). Susan Carter, the applicant, repeated these assurances before the Planning Commission, and I quote: "The women will not have vehicles and will be traveling to and from town with us as we do. This endeavor will have much less of an impact on the roads than current permitted use of short or long term leasing of the casitas" (testimony, September 15, 2016, page 13). **But this claim is disingenuous** for a number of reasons.

First, we are not told how many such trips to town there will be. We are told that the retreat clients will be doing community service in town (testimony of Susan Carter before the Hearing Officer, August 25, 2016, page 10), and there are hints that this service commitment will be extensive, part of the client's "daily schedule" (testimony of Susan Carter before the Hearing Officer, August 25, 2016, p. 10), and enough to "benefit the Santa Fe Community philanthropically" (testimony of Susan Carter before the Planning Commission, September 15, 2016, p. 13). Having been deeply involved in service learning at the College of Santa Fe, I know that arranging such placements can be complicated, and to arrange for 6 women to perform meaningful community service at the same time, so as to prevent multiple trips to and from town, seems highly improbable. Moreover, once the applicant has the variances in hand, she appears ready to expand her operation, requiring more community placements and more trips to and from town. Consider the artful exchange between the applicant and Planning Commissioner Gonzales: "Commissioner Gonzales: Is it your intent at all to improve this property in any way and make it bigger and have more than 6 women being treated at any one time? / Ms. Carter: Not right now, sir" (testimony, September 15, 2016, page 13). In any event, once the variances are granted, there is no limit to the number of clients to be ferried to and fro or the number of trips to be made, and no way to guarantee that clients will never have access to their own vehicles.

Second, the applicant and her advisors make no mention of the traffic to be generated by service providers until pressed by the Hearing Officer: "Hearing Officer: And how about people coming to deliver services? Yoga teachers, counselors, -- / Ms. Jenkins: Yeah, there could be-- yeah, you know, this has really been this is our first step. So some of the programmatic elements are being developed but there may be an occasional yoga teacher or there may be the occasional art teacher" (testimony, August 25, 2016, page 8). We are told that the retreat's clients will be paying \$15,000/month (see testimony before the Planning Commission, September 15, 2016, page 26), and I suspect for that kind of money they will be expecting some amenities. Who's going to shop for and deliver their food, cook their meals, clean their casitas, do their laundry, drop off and pick up their dry cleaning? I certainly would not pay \$15,000 for the privilege of doing all that myself. And who is going to maintain the "yoga/art space"--the remodeled workshop referred to by Ms. Jenkins in her testimony before the Hearing Officer (page 5)? Finally, the applicant and the Hearing Officer place special emphasis on economic development (to be discussed more fully below). Does this mean there will be employment opportunities for County residents? If so, there is going to be a lot more traffic going up and down both La Barbara Trail and La Barbara Road. (See, for example, the testimony of Susan Carter before the Hearing Officer, August 25, 2016, page 11: "...not to mention Santa Fe has...so many amazing practitioners...".) Again, once the variances are granted, there is no limit on the number of employees commuting, or the number of service providers delivering goods and services, to say nothing of visiting friends and family.

While we have no idea what the traffic load will be, the claim that it will be minimal seems unfounded, and the waiver of the Traffic Impact Study both unwarranted and unfortunate. Common sense suggests a significant increase in traffic and a change in its quality--more drivers unfamiliar with the road. In any event, **any increase in traffic on La Barbara Trail and La Barbara Road only magnifies the dangers such substandard roads present, defeats the goals of the SLDC to lessen air pollution and prevent climate change, and clearly does not serve the public interest.**

c. Fire Danger

According to the Santa Fe County Fire Department, **the subject property lies within "An Extreme Wildland-Urban Hazard Area"** (Development Review, July 13, 2015). Granting the proposed variances will significantly increase the danger of wildfire, which is already extreme. Study after study of Americans who abuse alcohol and drugs find high correlations with smoking. I referred to one such study before the Planning Commission published this year: *viz.*, Gatley & Callaghan, *Tobacco Related Mortality among Individuals with Alcohol or Drug Use Disorders*, in Victor R. Perry, ed., *Neuropathology of Drug Addictions and Substance Misuse*, vol. 1, Academic Press, 2016.

This study reports co-addiction between alcohol and tobacco to be 75% across all groups, 74% between cocaine and tobacco, and 79% between other opioids and tobacco (page 104). Thus, it is **extremely likely** that the **majority** of the individuals to be served by Heart's Way Ranch will be smokers. That same study found that among all smokers, those with other addictions are likely to smoke more heavily. Note also that the proposed center presumes that its clientele will not have dealt with the underlying causes of their addictions (testimony of Susan Carter before the Hearing Officer, August 25, 2016, page 10). So, beyond reasonable doubt, **the retreat will be housing hard core, heavy smokers, with addictive personalities.**

How do the applicants propose to deal with this problem? Here is the only response we have heard: "There's not going to be any smoking on the property" (testimony of Mr. Friedman, attorney for the applicant, before the Hearing Officer, August 25, 2016, page 24). Not allowing hard core addicted smokers to smoke on the retreat's property sounds like an invitation for them to smoke in the adjacent National Forest. Because hard core addicted smokers are going to smoke somewhere. If, on the other hand, the retreat staff attempt to ban smoking completely, enforcement of such a ban becomes a problem. Will they search the persons and possessions of the clientele, when they first arrive, and after each visit to town (which appear to be frequent)? Note finally that the retreat's clientele will not be from around here, and therefore unfamiliar with the extreme fire danger. **It will only take one carelessly tossed cigarette butt in the National Forest, on a dry windy spring day, to threaten the whole canyon, and even the Santa Fe Watershed,** which is a hop, skip and a jump from the eastern border of the subject property. And the 9 foot wide bottleneck on La Barbaria Trail, between a sheer wall on one side and a sheer cliff on the other, restricts the access of all but the smallest emergency vehicles-- which is why a variance is being sought. **And the variance sought for La Barbaria Trail asks the Commission to overrule the conditions for approval set forth in the report of the Santa Fe County Fire Department,** dated July 13, 2016, which, among multiple concerns and conditions, requires roadways with a minimum width of 20 feet.

The applicant and her agents claim that they have taken steps to make their property and the canyon safer from fire. Such a claim is disingenuous. First, the water storage tanks and fire hoses they refer to were in place before the land was acquired by the current owners, and are placed in such a fashion to defend the structures on the property. Second, the promise to add sprinkler systems in the casitas (and later to the main residence) again serves only to defend the structures. Wildfire, not a structure fire, is the real danger here. Should a wildfire occur, most of us in La Barbaria Canyon will confront an extreme risk to our lives and property, while the threat to the structures on the subject property, and the persons occupying them, will admittedly be reduced.

In short, the applicants have not appreciably minimized the risk of a wildfire while their proposal significantly increases the chances of such a catastrophic event. Surely increasing such risk does not serve the public interest. But consider also the County's liability, should La Barbaria Canyon,

and perhaps the Santa Fe Watershed burn. I am not a lawyer, although I did go to law school, so I can imagine the feeding frenzy if, knowing the risks documented here, by your own land use staff, and by the Santa Fe County Fire Department--knowing these risks, the County Commission allows this proposal to go forward, and the worst in fact happens.

[Curiously, Victoria Devargas, from the County Fire Prevention Division, told the Hearing Officer that the applicants had agreed to "all the requirements" addressed in Inspector Gilmore's letter, dated July 13, 2016--requirements which include roadways with a minimum of width of 20 feet (testimony before the Hearing Officer, August 25, 2016, page 25). And Ms. Jenkins, in sworn testimony before the Planning Commission on behalf of the applicant, claimed the following: "The Fire Department is recommending approval of this application in consideration of the condition of the driveway and the additional safety measures that are going to be employed via the automatic fire suppression on the property" (testimony, September 15, 2016, page 8, based on a letter from Inspector Gilmore, dated September 7, 2016, which was circulated at that meeting). Gilmore's September 7 letter in fact agrees to waive the Fire Code's 11% grade requirement on the driveway (Sendero de Corazon) in exchange for the installation of a fire suppression system in the main residence, and then reiterates that approval of the project is subject to "the conditions previously stated in the review letter completed July 13, 2016," which again includes roadways with a minimum width of 20 feet. That requirement (among others) has not been met, and cannot be met, given the easement and topographical characteristics of La Barbara Trail. One has to wonder if the applicant or her agents have in fact misled County Fire Officials and attempted to mislead the Planning Commission.]

2. Does Enforcement of the SLDC result in Unnecessary Hardship?

a. Self-Inflicted Hardship

The current owners of the subject property purchased it in January, 2016, after passage and implementation of the SLDC. Had the SLDC not been approved, we would not be here, because the proposed Heart's Way Ranch retreat would not have been allowed under the previous zoning regime. The SLDC does not block continued residential use of the property, or the leasing of the two casitas; neither does it impede access for these uses. In light of the doctrine first announced by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), legislative bodies and courts in New Mexico have designed and interpreted the standards for granting variances to guard against "takings," that is, a significant devaluation of property as result of a land use regulation. While there can be no legal taking here, because all the regulations at issue were in place before the the current owners purchased the property, clearly the SLDC does not in any manner compromise the existing residential use of the property.

The SLDC does permit the kind of retreat proposed in the new "Rural Fringe" classification, but it also subjects that kind of commercial use to well-considered road safety standards. The current owners could have conditioned purchase of the property on approval of the variances they now seek, but chose instead to assume the risks of not doing so. **Any "hardship" they claim now, in their efforts to secure approval of the variances, must be understood to be self-inflicted.** And to countenance a claim of self-inflicted hardship as a strategy for securing variances will serve only to undermine the County's attempt to implement genuinely *comprehensive* and *integrated* land use planning. [See, e.g., *Clouser v. David*, 309 F.2d 233 (D.C.App. 1962), *cert. denied*, 372 U.S. 929 (1963), and its citation in *Downtown Neighborhood Association v. City of Albuquerque*, 109 N.M. 186 ¶ 21(C.App., 1989).] **Granting the applicant's variances in this case would set a precedent for a property owner who, for example, invests in a structure or a road contrary to regulations in the Code, and then seeks a variance to ratify his acts, claiming loss of his investment as the hardship to justify the variance.**

b. Necessary Hardship

All laws and regulations create "hardships," in the sense that they prohibit conduct that one might want to otherwise undertake. While this ordinary understanding of "hardship" does seem to inform the applicant's claim, the real issue here is whether enforcement of the SLDC creates hardship, *as a matter of law*--and not just hardship, but *unnecessary* hardship.

The SLDC restricts the application for variances to situations involving "dimensional requirements of the Code" (Section 14.9.7.1). While technically the requested variances involve dimensional requirements, *viz.*, grade and width, please recognize that these dimensions involve issues of safety, rather than the more typical dimensional requirements, such as height, setbacks and the like, generally more concerned with aesthetic considerations. Assuming, *arguendo*, that enforcement of the road standards creates a hardship, that hardship could be said to be *necessary* because of a compelling interest in safety. In any event, because it is safety and not aesthetics which is at stake here, the Commission ought to consider these variance requests with the utmost scrutiny.

Perhaps I can clarify my meaning by distinguishing the circumstances here from a case involving the construction of a cell tower which made it all the way to the New Mexico Supreme Court. I am of course referring to *Paule v. Santa Fe County Board of County Commissioners*, 138 N.M. 82 (S.C., 2005), which was an action brought to review a decision by the Board to grant a height variance. There were a number of legal issues involved in that case, not the least of which was the need for the Board to respect the dictates of the Federal Telecommunications Act of 1996, but there are two features of the Supreme Court's review especially relevant to Heart's Way Ranch. First, construction of the cell tower was a permitted use, under the existing zoning regime, just as

the retreat proposed here is a permitted use. But second, the Board in the cell tower case had practical alternatives, both of which served the County's goal (and the federal mandate) to enhance wireless services: given the mountainous terrain, the Board could grant the height variance, to allow a single tower, or compel the contractor to build multiple towers at much greater cost to him (hardship), but also at much greater cost to the sensitive environment. The applicant for Heart's Way Ranch wants the Board to believe that there are similar alternatives here. But in fact all parties agree that, given the 20 foot easement and topographical characteristics of La Barbaria Trail, nothing can be done to bring that road into compliance. Despite the scenario proffered by the applicant of tearing up the countryside in order to comply with the Code, the environment here is safe. **In Paule, the Board chose what it believed to be the lesser of two "evil" alternatives to advance a beneficial goal. By contract, to grant the variances sought by Heart's Way Ranch requires the Board to significantly compromise the paramount goal of the County's exercise of its police powers, vis., the health, safety and general welfare of its residents.** Thus, whatever hardship might be imposed on the applicant, that hardship can be viewed as *necessary*.

c. Exceptionality

The SLDC allows variances **only** where "extraordinary and exceptional situations or conditions of the property" result in "peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner" (Section 14.9.7.1). And a variance is defined as follows: "Permission to depart from this Code when, because of special circumstances applicable to the property, strict application of the provisions of this Code deprives such property of privileges enjoyed by other property in the same vicinity or zone" (Appendix, page A-43).

There is nothing extraordinary or exceptional about the Heart's Way Ranch property. All of us who live in the discrete neighborhood along La Barbaria Trail drive up and down the Big Hill, we all live in an extreme wildfire hazard zone, and all our properties fall within the Rural Fringe classification. That there might be Rural Fringe areas in other parts of the County suited to the kind of retreat proposed here should not allow Heart's Way Ranch to claim exceptionality, as the Code mandates respect for "historical patterns and boundaries in the development approval process" (Section 1.4.2.23), and the definition of variance places as much weight on "vicinity" as it does zoning classification. But, more telling, should the Board grant the variances sought by Heart's Way Ranch, all the present and future owners of land in this neighborhood would be entitled to the same consideration, the same *privileges*. In other words, every property owner up here could select a permitted commercial use, placing ever increasing demands on the already substandard and dangerous road infrastructure, compromising the SLDC's goals of reducing air pollution and preventing climate change, increasing the dangers of wildfire and multiplying the consequent harm of such an event. Such development would also be wildly inconsistent with the Code's stated purpose of Rural Fringe zones, a designation intended in part to protect "areas that

are inappropriate for more intense development due to their sensitivity” (Section 8.6.3.1). It is to prevent just such a scenario that the Code requires “extraordinary and exceptional situations or conditions of the property” as a precondition for a variance application. **A full understanding of the purposes of this restriction clearly demonstrates that denying the variances does not constitute a hardship as a matter of law, and that granting the variance request that pertains to La Barbaria Trail would not only be contrary to the public interest, but would undermine the zoning regime of the SLDC.**

3. Do the Variances serve the Spirit of the SLDC and Substantial Justice?

a. The Spirit of the SLDC

The County Commission articulated its expectations of the SLDC in Section 1.5, and standing first among these is the following: that the SLDC should promote “the health, safety and welfare of the County, its residents, and its environment by regulating development activities to assure that development does not create land use and public nuisance impacts or effects upon surrounding property, the County and the region” (Section 1.5.1).

As has been shown, granting the variances sought by Heart’s Way Ranch does not promote the safety and welfare of County residents, with potentially devastating consequences for the surrounding property, the County and the region. La Barbaria Trail is a steep narrow road which restricts access to all but the smallest fire fighting vehicles, while the threat of wildfire, already extreme in La Barbaria Canyon, will be significantly exacerbated by a commercial operation that, by its very nature and design, will attract and house hard core addicted smokers from out of state. Moreover, the likelihood of increased traffic, which brings inherent risks to vehicles and pedestrians alike, especially given the steep, narrow, and twisting character of the roads, will also have adverse effects on air quality and climate change, contrary to the ethic of responsible ecological development apparent throughout the stated purposes and intent of the Code in the whole of Section 1.4. And these risks and adverse effects will only be magnified if the variances are approved, thereby opening the neighborhood to increased commercial development, which in turn would directly compromise the zoning regime of the SLDC.

Recognizing that the Code requires variances to observe its spirit (Section 14.9.7.4), **the attorney for the applicant asserts that “the purpose of the Code is to foster economic vitality of local businesses,”** specifically citing Section 1.4.2.11 (testimony of Mr. Friedman, before the Hearing Officer, August 25, 2016, page 25). **The Hearing Officer accepts this assertion as sufficient** to meet the requirement that the variances observe the spirit of the SLDC (page 4 of her Recommended Decision and Order). **This seems a rather narrow understanding of the purpose and intent of the Code, and a rather thin reed upon which to rest approval of the variances,** insofar as observing the spirit of the Code is a mandated

requirement. **But even the claim** that the proposed retreat serves the Code's intent **with respect to economic development is suspect.**

Section 1.4.2.11 reads as follows: [The SLDC shall] "accommodate within appropriate zoning districts, regulations for protection and expansion of local small business, professions, culture, art and crafts including live/work, home occupations and appropriate accessory uses in order to support a balanced, vigorous local economy."

An earlier section, 1.4.2.6, creates three sustainable development areas, and establishes SDA-1 as the priority growth area. Heart's Way Ranch falls into a SDA-3 area--that is, the lowest priority for economic growth. Coupled with the language of Section 1.4.2.11 this priority tends to suggest that the kinds of economic development most appropriate for SDA-3 are "live/work" home occupations, which would serve the ethic of sustainable and ecologically responsible development by minimizing commuting. But as documented above, Heart's Way Ranch will likely generate a lot of traffic: therapists and other service providers commuting to and from the facility, and clients commuting to and from town in order to satisfy their community service obligations. Mr. Graeser, speaking against the variances, put it this way: "Either it's a business that is going to provide jobs for a lot of people, in which case, there is going to be a lot of traffic going up that road, or there is not going to be a lot of traffic going up that road but it is not going to have much of an economic impact. You can't really have it both ways" (testimony before the Planning Commission, September 15, 2016, pages 22-23).

Finally, it has been suggested that the service provided by Heart's Way Ranch will have longer term economic benefits, based on a kind of "trickle down" theory, which goes something like this. Only women of a certain station can afford the \$15,000/month "tuition," whom the applicant characterizes as "executive women" (testimony of Susan Carter before the Planning Commission, September 15, 2016, page 12). Successful treatment of these women and their re-entry into society therefore promises great benefits, as they deploy the skills and mobilize the networks they have acquired because of their elite status. Putting the merits of this theory aside, it is enough to point out that whatever economic or charitable contributions these women generate will not benefit Santa Fe County, as the clientele of the retreat will be drawn from out of state. The residents of Santa Fe County, whatever their income, need not employ the services of Heart's Way Ranch, as there are plenty of therapy options in town and plenty of mountain forests to be freely accessed nearby.

b. Substantial Justice

Most if not all of the residents living along La Barbaria Trail came here for the quality of life, which of course may be understood by us in different ways. But some of the more common things we value are the isolation, the quiet, the forests, the wildlife, the ruggedness, the views, the peacefulness, the starry nights, the hiking opportunities, the underground utilities, the dirt

roads, the history--all things related to the fact that, despite development over the years, our little piece of La Barbaria Canyon has remained rural and residential. Of course, these are the same attributes that attracted Susan Carter and Shari Scott to this land (see the testimony of Susan Carter before the Planning Commission, September 15, 2016, page 12).

The development proposed by these two women exploits the rural and residential character of our neighborhood, and the quality of life it offers, for the purpose of private commercial gain. And should the variances be allowed, and the whole neighborhood opened up to commercial development, all of the things we value about our neighborhood may go up in smoke, perhaps literally. There is a doctrine in law and equity called "unjust enrichment," where one party enriches him or herself unfairly at the expense of another. While the doctrine as such does not apply here, the analogy is quite striking: Heart's Way Ranch makes the money, and we pay the price. I do not call this justice.

La Barbaria Trail is a private road, its easement collectively owned, and its maintenance a matter of neighborhood cooperation. Should the variances be granted, a significant portion of that road will bear the additional burden of commercial traffic. Who will be responsible for maintaining that part of the road, and at what level? Who will assume liability for accidents caused or suffered by the commercial traffic? Will Heart's Way Ranch indemnify the non-commercial residents, or simply externalize the liability? It appears, absent formal commitments, that Heart's Way Ranch will appropriate not only our quality of life, but our road and our good will in maintaining it, and profit handsomely in the bargain. I do not call this justice.

A number of the neighborhood residents, including myself and my wife, are seriously considering selling our property if the Commission approves the variances, because the quality of life we enjoy will be threatened. Even in the short term the fear of wildfire, which we have lived with for 30 years, will become intolerable, and walking the roads will become increasingly dangerous, noise will increase, wildlife will retreat. Once Heart's Way Ranch expands its operation, more and more of the attributes we value will disappear. We have to wonder what the diminution of quality of life will do to the value of our property. Should property values decline (along with property tax receipts), might we have a "takings" claim against the County? New Mexico courts have recognized hedonistic damages in the context of personal injury; perhaps a creative lawyer will try to expand the scope of such damage awards to include loss of quality of life in land use cases. Now that would be justice.

Concluding Remarks

As members of the Board must know, there are many provisions in the Code to promote involvement of local property owners in the development approval process, and even more

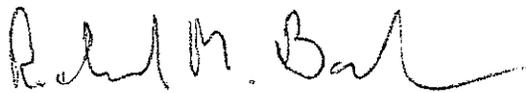
provisions being actively considered. I hope you adopt them, because that kind of involvement certainly did not happen here.

My wife and I were never contacted by the applicants, despite the claim made by Ms. Jenkins before the Hearing Officer that the applicants "reached out to every single one of their neighbors in this community" (testimony, August 25, 2016, page 6). No sign was ever posted on the public road, as required by Section 4.6.3.3. We did receive a letter notifying us of the dates of the public hearings before the Hearing Officer and Planning Commission, although the first hearing was cancelled without notice. The applicants were able to get the Traffic Impact Study waived, *ex parte*; I trust the analysis of traffic presented here demonstrates that the applicant was less than forthcoming at that meeting, and that neighborhood involvement at that stage is crucial. Frankly I felt ambushed by this proposal, which has already impacted our lives adversely, and should the variances be approved, will impact us even more.

I was baffled by the recommendation of the Hearing Officer, having listened to the testimony at the public hearing, and completely dismayed by the utter lack of documentation and reasoning accompanying her Decision and Order. After spending more hours than I care to think about drafting this appeal, I am convinced that factors other than the law must have been decisive. It did take the neighborhood awhile to mobilize opposition, probably because no one knew what was really going on; perhaps the absence of preparation on our part contributed to her decision. And the Hearing Officer may have been misled by the mistaken testimony regarding the grade of La Barbaria Trail, and the false assertion that the applicant had agreed to all the conditions of the County Fire Department's Development Review. But as a political scientist I have been trained in such cases to follow the money. While I can only speculate, it seems to me that money here could mean "connections," including powerful friends who know who to call and who to invite to lunch, as well as high priced public relations and legal talent. Or it could be the potential of large tax revenues. Gross revenue from the proposed retreat could exceed one million dollars annually, and it appears that the applicants plan to expand their operation once they have the required variances in hand. In either case, when money talks, rational voices are silenced, and the rule of law and democracy are diminished.

My father was a scientist who worked for the federal Bureau of Mines. He wrote reports alerting his superiors of the dangers of asbestos in the early 1950's. Of course, nothing came of those reports, and my father was told to stop writing them. That's what happens when money talks. The overwhelming majority of land owners along La Barbaria Trail have raised our voices in the hope that the rule of law and democracy still have life in Santa Fe County. Please, don't let us down.

Respectfully Submitted,



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Attachments:

Map of Parcels Accessed by La Barbaria Trail, showing opposition and support for the variances by property owners

Letters of opposition not yet part of the public record

“Common” Letter

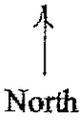
Dasburg Family Trust Letter

Sinnott Letter

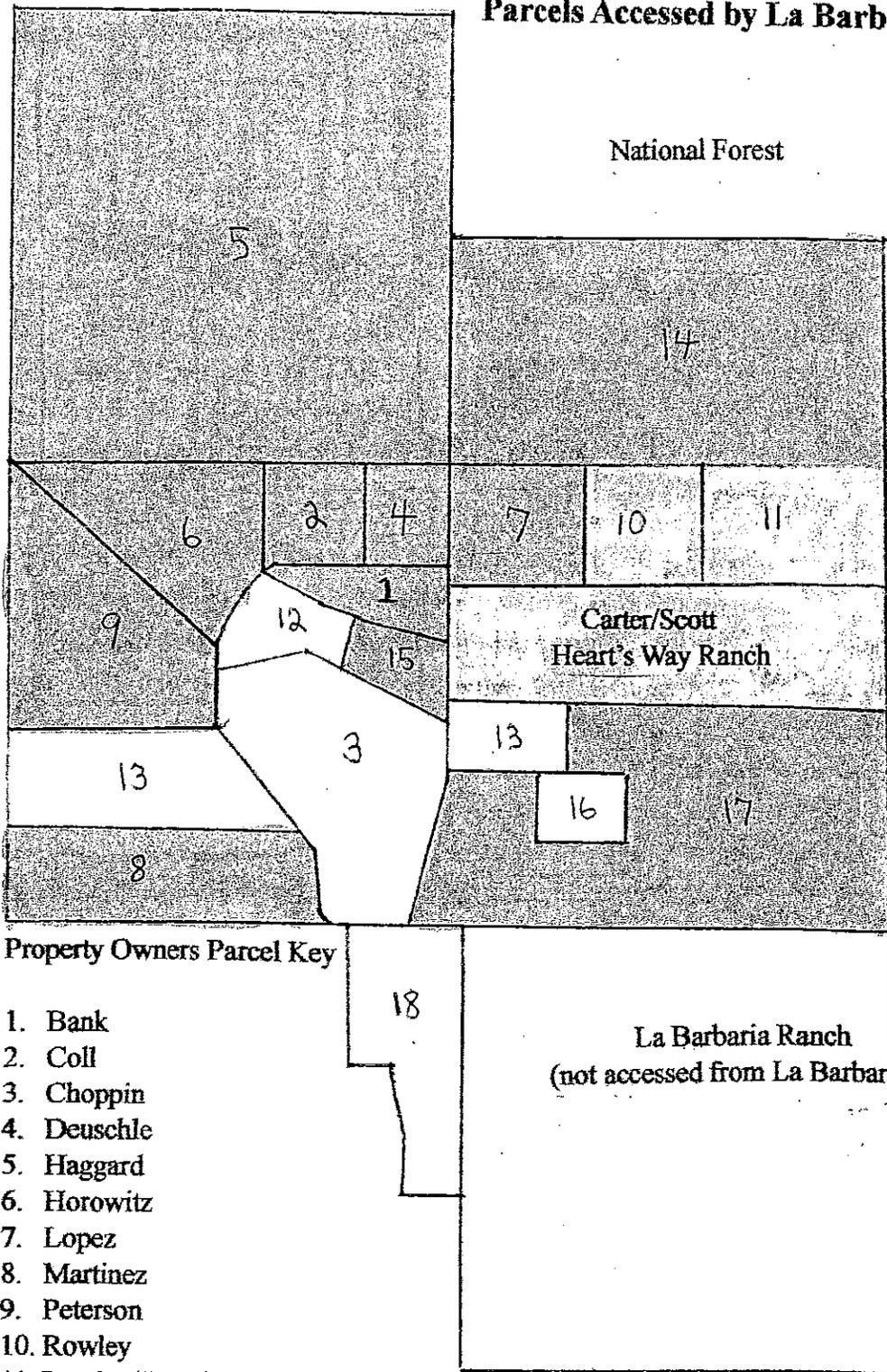
Survey report on La Barbaria Trail

Wilderness Gate

Parcels Accessed by La Barbaria Trail



Double Arrow



Property Owners Parcel Key

1. Bank
2. Coll
3. Choppin
4. Deuschle
5. Haggard
6. Horowitz
7. Lopez
8. Martinez
9. Peterson
10. Rowley
11. Rowley/Spaeth
12. Shallit
13. Shelton
14. Sinnott
15. Souberman
16. Welch
17. Dasburg Family Trust
18. Egleston Living Trust

Oppose the Variances 

Support the Variances 

No Recorded Public Position 

October 13, 2016

Dear Commissioners,

We, the undersigned, oppose the change in use of 34 Sendero de Corazon from a residential to a commercial property and request that its status as a residential property be retained. We are all property owners and neighbors of the residents of 34 Sendero de Corazon, Susan Carter and Shari Scott, and like them, we access our properties via La Barbaria Trail. The reasons for our opposition are numerous and differing but we all reach the same conclusion. This letter will attempt to present the bulk of our concerns and feelings.

Some of us are deeply concerned about an increased risk for wildfire in the National Forest bordering this property due to cigarette use by the clients housed in the proposed facility; our concern is heightened by the fire department's stated inability to effectively combat fire here due to road and water access issues. The strong correlation between alcoholism and smoking is well documented. Furthermore, and according to a statement Ms. Carter made at the September hearing, their revolving roster of clients would be traveling to Santa Fe County from all manner of places and would thus be neither invested in the area nor schooled in the very real fire danger present here. An unextinguished cigarette butt casually tossed on or near the National forest that borders 34 Sendero de Corazon could have devastating consequences.

Some of us anticipate that travel on La Barbaria Trail, a steep, narrow, and winding road, would become more perilous due to an increase in overall traffic and drivers who are unfamiliar with the road and its hazards. We know where to focus extra attention; the many visitors to this facility would face a significant learning curve.

Fire and road travel encompass two major safety concerns yet there are other road concerns: a financial, a nuisance, and a legal one. Financially speaking, many of us assume our private road system would be costlier to maintain since increased commercial traffic would necessarily hasten road deterioration. It is a costly burden to care for as is. In terms of nuisance, some residents take issue with the increase in road noise that would come with increased traffic. It's safe to say that most of us chose this particular environment and remain here because, in part, we value the relative quiet and the sounds of nature as opposed to the noise pollution of vehicular traffic. Lastly, a legal question concerning the road has been raised. It

asks if members of our road association could be held individually liable should a client at the proposed facility become injured in a traffic accident and sue, blaming the accident on the poor quality of a road the association members are charged with maintaining.

The commercial nature of this project is the wellspring of many concerns. A number of residents believe inserting a commercial space into a neighborhood currently and historically comprised solely of long-term residences and open land would degrade and erode the character and quality of life here. We make our residence in this neighborhood because of the exclusion of commercial spaces (semi-private, public) from the fabric of this residential neighborhood.

Our small community grew to its present size over an extended period of time; there was no grand plan. And we are organized in a similarly organic way. That there is no strong organizational structure and no covenants in place make us vulnerable to the kind of project proposed at 34 Sendero de Corazon. Yes, we are loosely organized, but we love this environment and wish to protect its neighborly and rural character. We assumed, rightly or wrongly, that despite the recent zoning changes, our neighborhood would remain residential and rural because of the extreme fire danger present here coupled with the limited access for emergency vehicles.

Most of us worry about precedent, about this project paving the way for others and/or perhaps in the eventual expansion of the facility we are now opposing. According to words spoken at the September hearing, Susan Carter and Shari Scott have left the door open in this regard. Approving this project would mark the neighborhood as residential-commercial mixed-use; which could have unforeseen consequences, including further commercial intrusion.

Finally, though definitely neither the last nor least important objection, some of us stand in opposition because we treasure the historic significance of La Barbaria Canyon and its environs. As private landowners we have been happy to keep this historic passage into Santa Fe open to those who wish to continue the legacy by walking or biking this historic trail. As a solid residential neighborhood, this is currently feasible. However, the increased human pressure that would accompany commercialization and become stronger given the distinct possibility of further commercialization should this project be approved and precedent set, would make this level of openness difficult to maintain. We don't want to be another closed, gated community.

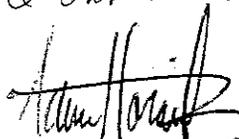
Mss. Scott and Carter could have made the purchase of their chosen property contingent on the granting of variances and project approval. Instead they chose a riskier path: to buy the property first and win approval after the fact. Despite their own, perhaps imprudent, decision making, they have added personal hardship to the list of reasons to be allowed to continue. We believe Mss. Scott and Carter should be held accountable for a situation they alone brought into being. Not being held fully responsible and accountable, in effect, transfers the burden of the predicament they created onto their neighbors; shifts the hardship onto us. It is an unfair stance to take.

In conclusion, every signer of this letter has his or her own argument, or set of arguments, for opposing the existence of 34 Sendero de Corazon as a commercial property and as a for-profit 'wellness retreat' for women with alcohol abuse problems. A number of the opposing reasons are stated here and others will, no doubt, be individually expressed. We welcome Susan Carter and Shari Scott as residential owners of their property but we disapprove of their business plan for this property and request that the wishes of the majority of residents along La Barbaria Trail be honored by those in charge of deciding this case. We respectfully ask you to not approve this plan and to keep 34 Sendero de Corazon's status intact as a residential property.

Sincerely,

Cathy Duschle
7 Owl Creek Rd,

P. M. Bank
Laura K. Bank
6 Owl Creek Rd.


ADAM HOROWITZ
23 OWL CREEK

Catherine Zaccari
83 La Barbaria Tr.

Dany Lopez
26 CAMINO TOROVA

Elen Souheman
63A La Barbaria Trail

Needa Mark
31 La Barbaria Trail


La Barbaria Tr.

September 19, 2016

County Land Use Administrator
P.O. Box 276
Santa Fe, NM 87504-0276

Re: CASE #V 16-5150 Heart's Way Variance

To whom it may concern:

This is again Deborah Park, Trustee of the Dasburg Family Trust at 50C La Barbara Trail. I just sent you a letter regarding the above Heart's Way Variance. It has since come to my attention that there are additional concerns about Heart's Way. This whole project has been very confusing, and I am not sure I understand its scope even now. I have just spoken at length today with Catherine Joyce-Coll, and I am returning to my original support of the La Barbara Trail Association – that we are opposed to Heart's Way in our neighborhood. Although it is a worthy project, there has to be a more suitable and safer environment for it than on our rather primitive road in a high fire-risk area.

Deborah Park

Deborah Park
Dasburg Family Trust – 50C La Barbara Trail, Santa Fe, NM 87505
My address: 5075 Park West Ave., San Diego, CA 92117

Sept. 21, 2016

To La Barbara Trail Association:

Please be

advised that I am not in favor of a recovery facility in the residential neighborhood of which I am a property owner. My concerns about traffic, future environmental impact and that I chose to purchase in this area understanding it was a neighborhood for my family - and not an area with transient pedestrian or vehicle traffic - are respectfully submitted with expectations of adhering to the zoning of this county area in Santa Fe. Thank you also for maintaining the integrity of La Barbara thru your years of teamwork and community service. The area is pristine thanks to the association and our neighbors. The association has been professional and represented the road incredibly. Please keep up the impressive work in La Barbara as it

Thank you for your time.

K. Sinnott

PO Box 22773
Santa Fe, NM 87502



email: drsurveys@qwestoffice.net
Tele: (505) 820-9200
Fax: (505) 820-1600

September 13, 2016

TO: The La Barbara Trail Association

On September 12, 2016, I field checked the slopes of the existing roadways at two locations of La Barbara Trail. One location at the intersection of Camino Tortuga and La Barbara Trail had a slope of 15% while the second location along La Barbara Trail within Tract 3 (3 La Barbara Trail) revealed a 560' foot stretch of La Barbara Trail averaging 12% grade though a curve situation. A 126' foot portion of this stretch has a slope of 14.1%.

Philip B. Wiegel

Philip B. Wiegel NMPS 8758



appeal is filed within five (5) days, the decision of the Administrator shall be final and not subject to further appeal, review or reconsideration. The timely filing of an appeal shall stay further processing of the application unless the Administrator certifies to the Planning Commission that special circumstances exist.

4.5.3. Appeals of Subdivision Decisions Under Summary Review. Any person with standing who is or may be adversely affected by a decision approving or disapproving a final plat under summary review must appeal the decision to the Board within five (5) working days of the decision. The Board shall hear the appeal and shall render a final decision.

4.5.4. Appeal of a Final Decision of the Planning Commission. Any party with standing may appeal a final decision of the Planning Commission to the Board. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from a decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

4.5.5. Appeals of Board Decisions. Any person aggrieved by a final decision of the Board pursuant to this section may appeal to District Court in accordance with NMSA 1978, § 39-3-1.1 (as amended) and Rule 1-074 NMRA.

4.6. NOTICE.

4.6.1. Generally. The notice requirements for each application are prescribed in the subsections of this chapter and by state law.

4.6.2. Notice of Hearing. Notice of a public hearing to be conducted by the Hearing Officer, Planning Commission, or the Board, shall be provided as described in the resolution adopted by the Board pursuant to the Open Meetings Act. Public hearings shall be conducted according to the Board's rules of order. The name of the applicant and agent if any shall be stated in the notice.

4.6.3. General Notice of Applications Requiring a Public Hearing. All applications not requiring specific notice under subsequent subsections shall provide the following notice:

4.6.3.1. Newspaper. Notice of hearing shall be published by the applicant in a newspaper of general circulation at least fifteen days (15) prior to the date of the hearing. The Administrator shall provide the form of the notice to the applicant.

4.6.3.2. First Class Mail. Notice of the public hearing shall be mailed by the applicant by first class mail at least fifteen days (15) prior to the date of the hearing to the owners, as shown by the records of the County Assessor, of lots or of land within 500 feet of the subject property, excluding public right-of-ways. The Administrator shall provide the form of the notice to the applicant.

4.6.3.3. Posting. Notice of the public hearing shall be posted by the applicant on the parcel at least fifteen (15) days prior to the date of the hearing. The notice to be posted shall be provided by the Administrator and shall be prominently posted on the property in such a way as to give reasonable notice to persons interested in the application. The



7.11.4.3. There shall be a minimum of three percent (3%) crown in the driving surface for water runoff.

7.11.5. Drainage; Curb and Gutter.

7.11.5.1. **Culverts.** Culverts, if used, shall be sized to accommodate a one hundred (100) year storm. Culverts shall also be of sufficient size, gauge, and length, and placed appropriately deep to withstand projected traffic loading and storm runoff.

7.11.5.2. **Curb and Gutter.** Curb and gutter shall be required where deemed necessary for drainage control or protection of pedestrians.

7.11.6. Intersections and roundabouts.

7.11.6.1. Roads shall be laid out to intersect each other as nearly as possible at ninety (90) degree right angles; under no condition shall intersection angles be less than seventy (70) degrees.

7.11.6.2. Offset intersections less than two hundred (200) feet apart shall not be permitted.

7.11.6.3. Property lines at road intersections shall be rounded with a minimum radius of twenty-eight (28) feet or a greater radius when necessary to permit the construction of a curb and sidewalk or when otherwise needed.

7.11.6.4. A tangent of sufficient distance shall be introduced between reverse curves on all roads according to AASHTO standards.

7.11.6.5. When connecting road centerlines deflect from each other at any point by more than ten degrees, they shall be connected by a curve with a sufficient radius adequate to ensure adequate sight distance according AASHTO standards.

7.11.6.6. Grades at the approach of intersections shall not exceed five percent (5%) for one hundred (100) linear feet prior to the radius return of the intersection, excluding vertical curve distance.

7.11.6.7. Curvature in intersection design alignments shall not be less than stopping distances required for the design speed of the road as per AASHTO Standards. The geometry of intersections shall be consistent with the design speed of the road and AASHTO Standards.

7.11.6.8. Road jogs with centerline offsets of less than two hundred (200) feet shall be prohibited.

7.11.6.9. A capacity analysis of any proposed roundabout shall be conducted in accordance with Highway Capacity Manual methods. The analysis shall include consideration for the largest motorized vehicle likely to use the intersection.

7.11.6.10. Roundabouts shall be designed in conformance with the guidelines set forth in the Federal Highway Administration (FHWA) publication "Roundabouts: An Informational Guide." (Second Edition Report 672, National Cooperative Highway Research Program, 2010).

Table 7-13: Rural Road Classification and Design Standards (SDA-3).

	Avg. daily traffic	# of driving lanes	Lane width (ft)	Non-vehicular side paths	Bike lanes	Minimum ROW (ft)	Design Speeds (mph)	Max % Grade	Min. agg. base course	Double penetration chip seal with fog coat	Min. bit. pavement	Max % Super-elev.
Major arterial or highway	5000 +	2-4	12	n/a	Two 5 ft on-road	150	Level: 70 Rolling: 70 Mount: 50-60	5%	6"	n/a	6"	8%
Minor arterial	2000 to 4999	2-4	12	n/a	Two 5 ft on-road	120	Level: 60-75 Rolling: 50-60 Mount: 40-50	5%	6"	n/a	5"	8%
Collector	401-1999	2	11	n/a	n/a	80	Level: 40-60 Rolling: 20-50 Mount: 20-40	8%	6"	n/a	4"	8%
Local	201-400	2	10	n/a	n/a	50	Level: 30-50 Rolling: 20-40 Mount: 20-30	9%	6"	n/a	3"	8%
	0-200								6"	yes	n/a	
Cul-de-Sac	0 to 300	2	10	n/a	n/a	38	Level: 30-50 Rolling: 20-40 Mount: 20-30	9%	6"	n/a	n/a	n/a
Driveway	n/a	1	14	n/a	n/a	20	n/a	10%	n/a	n/a	n/a	n/a

7.11.3. General Requirements. Adequate roads shall be provided such that the arrangement, character, extent, width and grade of each shall conform to this section.

7.11.3.1. Connectivity. The arrangement of roads in any development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads in surrounding areas according to the Official Map, and shall provide reasonable means of ingress and egress to surrounding property. Roads within subdivisions shall not be gated unless the road is a dead end road serving no more than five (5) lots.

7.11.3.2. Road Names. Road names or numbers shall not duplicate or be similar to the names or numbers of existing roads; if the proposed road is an extension of an existing road, then the proposed road shall have the name of the existing road. All road names and numbers shall be assigned by the Santa Fe County Rural Addressing Division.

7.11.3.3. Service Life. Pavement shall be designed for a 20-year service life, and the design of pavement structures shall conform to the New Mexico Standard Specifications for Road and Bridge Construction. Pavement design documentation shall be prepared and signed by, or shall be under the supervision of, a professional engineer.



14.9.7. Variances.

14.9.7.1. Purpose. The purpose of this section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

14.9.7.2. Process. All applications for variances will be processed in accordance with this chapter of the Code.

14.9.7.3. Applicability. When consistent with the review criteria listed below, the planning commission may grant a zoning variance from any provision of the SLDC except that the planning commission shall not grant a variance that authorizes a use of land that is otherwise prohibited in the relevant zoning district.

14.9.7.4. Review criteria. A variance may be granted only by a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

1. where the request is not contrary to the public interest;
2. where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

14.9.7.5. Conditions of approval.

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant takes affirmative action consistent with the approval.

14.9.7.6. Administrative minor deviations. The Administrator is authorized to administratively approve minor deviations upon a finding that the result is consistent with the intent and purpose of this SLDC and not detrimental to adjacent or surrounding properties as follows:

1. minor deviations from the dimensional requirements of Chapter 7 of the SLDC not to exceed ten percent (10%) of the required dimension.

2. minor deviations from the dimensional requirements of Chapter 8 of the SLDC not to exceed five tenths of an acreage allowed in the zoning district.



NBA-34

Resident
50(BARBARIA TRL
SANTA FE, NEW MEXICO
87505

ROWLEY, KENNETH & SANDRA
38 CAMINO TORTUGA
SANTA FE, NEW MEXICO
87505

MOUNTAIN HEART, LLC
50 B LA BARBARIA TRL
SANTA FE, NEW MEXICO
87505

Resident
0 CAMIN TORTUGA
SANTA FE, NEW MEXICO
87505

SHELTON, KATHERINE K & J
50 A LA BARBARIA TRL
SANTA FE, NEW MEXICO
87505

ROWLEY, KENNETH & SANDRA
8497 S CUSTER LN
EVERGREEN, CO
80439

Resident
0 LA BARBARIA TRL
SANTA FE, NEW MEXICO
87505

LOPEZ, DENEZ
26 CAMINO TORTUGA
SANTA FE, NEW MEXICO
87505

CHOPPIN, GREGORY R & ANNE W
208 HOLLAND RD
SIMONVILLE, SC
29602

Resident
7 OWL CREEK RD
SANTA FE, NEW MEXICO
87505

SOUBERMAN, ELLEN J
63 A LA BARBARIA TRL
SANTA FE, NEW MEXICO
87505

DEUSCHLE, JAMES & CATHERINE
(TRUSTEES)
225 E 24TH ST
TULSA, OK
74114

BANK, RICHARD M & LAURA K
6 OWL CREEK RD
SANTA FE, NEW MEXICO
87505

**TRANSCRIPT OF THE
SANTA FE COUNTY
SLDC HEARING OFFICER MEETING**

Santa Fe, New Mexico

August 25, 2016

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Nancy Long on the above-cited date at approximately 3:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Staff Present:

Penny Ellis-Green, Growth Management Director

Vicki Lucero, Building & Services Manager

Tony Flores, Deputy County Manager

Mathew Martinez, Building & Development

Andrea Salazar, Assistant County Attorney

Jose Larrañaga, Case Planner

Victoria DeVargas, Fire Prevention

II. APPROVAL OF AGENDA

Hearing Officer Long approved the agenda as published which included a tabled item.

III. PUBLIC HEARING

- A. **CASE # V 16-5150 Hearts Way Ranch Variance:** Heart's Way Ranch, Susan Carter, Applicant, JenkinsGavin, Design & Development Inc., Agents, request three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of two casitas, a yoga area, and a main residence on 39.5 acres. The Applicant requests a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent, a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10 percent in three separate locations in order to get to the casitas and main residence, and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East, Commission District 4, SDA-3.

EXHIBIT

7

Hearing Officer Long read the case caption and introduced Mr. Larrañaga who is presenting for Mr. Lovato.

MR. LARRANAGA Thank you, Hearing Officer Long. The property is a 39.57 acre tract within the Rural Fringe Zoning area as defined by Ordinance 2015-11, Sustainable Land Development Code, Chapter 8, Section 8.6.3. Appendix B of the SLDC designates a retreat as a permitted use within the Rural Fringe Zoning District.

The Applicants agent submitted an Application for a Site Development Plan, to request a retreat. It was discovered after submittal that the approach to the intersection exceeds grade requirements of 5 percent for 100 linear feet, and the grade of the driveway is 17 percent-21 percent in three locations. Permits were obtained in 1994, for a driveway with grades up to 14 percent. The approval was granted in accordance with the Extraterritorial Zoning Ordinance which allowed for grades of 15 percent. However, the driveway was not constructed to the approved plans. Therefore, variances are requested

Building and Development Services staff has reviewed the Site Development Plan for compliance with pertinent SLDC requirements. The driveway grade of 5 percent for 100 linear feet upon an intersection and the overall driveway grade to get to the casitas and main residence exceed the required grade of 10 percent, and offsite roads do not meet the 20 foot driving surface. La Barbaria Trail is a base course surface with a minimum width of 9 feet and a maximum width of 18 feet. The driveway that accesses the site is 14 feet in width with a base course surface and has pull out locations. Improvements were done for fire protection to include pull outs, and two 10,000 gallon water storage tanks with a draft hydrant that was placed at the main residence.

The Applicant addressed the variance criteria as follows:

1. Where the request is not contrary to the public interest.

The variance is requested for an existing private driveway and this is not contrary to the public interest. The driveway will be used primarily by the property owners for access to the single family residence at the top of the driveway. There will be four to six retreat guests that access the two casitas and provide overnight accommodations. In the past, full time tenants have rented the guest homes. Additionally, installing an automatic fire suppression system in the casitas and workshop will be in the public interest. The property owner implemented driveway improvements and the driveway is well constructed and in the context of the steep terrain which minimizes slope disturbance.

2. Where owing to special conditions, a literal enforcement of the SLDC would result in unnecessary hardship to the Applicant.

Special conditions exist that the subject lot comprised of steep terrain and reconstruction of the driveway would cause scarring of the hillside. The previous owner worked in collaboration with the County Fire Marshall in effort to conform to safety standards. Reconstruction of the driveway to the SLDC standards would result in unnecessary hardship to the Applicant.

3. So that the Spirit of the SLDC is observed and substantial justice is done.

Maintaining the existing driveway is consistent with the SLDC as stated in Section 1.4.2.20: "Ensure that building projects are planned, designed, constructed and managed to minimize adverse environmental impacts." The driveway was constructed to minimize adverse environmental impacts, while satisfying the requirements with emergency access and life safety.

Staff Response: Although tenants have moved in and out of the casitas, this area is in an Extreme Wildland Fire Hazard Area. During inclement weather, and on slopes in excess of 10 percent, emergency access may not be possible due to the severity of the steep slopes. The structures will be utilized as a retreat center, and the use may increase tenants which can increase traffic use. Chapter 14, Section 14.9.7.4, Variance Review criteria states, Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant. The road was not constructed per approved plan, but road design standards have changed since that time, and the Applicant is now requesting to change the use from residential to non-residential. Staff acknowledges that it would be difficult to widen the road width, reduce the road grade or widen these areas without disturbing large amounts of 30 percent slope, and causing visual scarring.

Fire Review Comments:

- Fire is requiring that roads shall meet the minimum County standards for fire apparatus access roads of a minimum 20 feet width. Roads, turnouts and turnarounds shall be County approved and all-weather driving surface and un-obstructed vertical clearance of 13-feet 6-inches within this type of proposed development.
- The Driveway /fire access shall not exceed 11 percent slope and shall have a minimum 28 foot inside radius on curves.
- The entrance gate at the top of Sendero Del Corazon shall be set to open further to allow for the increased turn and radius into the Casita-B driveway.
- Due to the potential access issues and remote location of this project, for life safety and property protection this office shall require the installation of Automatic Fire Protection Sprinkler systems meeting NFPA13R requirements in the Casitas A and B.
- This development location is rated within an extreme Wildland Hazard Area and shall comply with all applicable regulations within the SFC Ordinance 2001-11, EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such area.
- This project shall also have a vegetation management plan as required by the Urban Interface Fire Code 2001-11. This plan shall be submitted in advance for review and approval.

The Applicant addressed the variance criteria as follows:

1. Where the request is not contrary to the public interest.
The request is not contrary to the public interest. La Barbaria Trail is an existing local roadway which has been serving the vicinity for several decades. As stated in the variance criteria answers above, Hearts Way Ranch will be used by the property owners and their guests to access the existing residence and casitas.
2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant:
The Local Road classification calls for two 10-foot wide driving lanes. As stated above, La Barbaria Trail lies within a 20-foot easement. The width of the easement, as well as the area's exceptional steep terrain, render it impossible to widen the road. A literal enforcement of the SLDC would result in unnecessary hardship to the applicant by essentially rendering access to Hearts Way Ranch an impossibility.
3. So that the spirit of the SLDC is observed and substantial justice is done.
This Variance request is intended to allow for a locally owned business with requisite zoning to move forward and commence operations. As stated above, Hearts Way Ranch is proposed sober-living wellness retreat center, which is permissible use in the Rural Fringe

Zoning District. The request therefore observes the spirit of the SLDC as stated in Section 1.4.2.11: Accommodate within appropriate zoning districts, regulations for protection and expansion of local small businesses, professions, culture, arts and crafts including live/work, home occupations and appropriate accessory uses in order to support a balanced, vigorous local economy.

Staff Response: Although the proposed use is permitted in this zoning district, all requirements of the Sustainable Land Development Code shall be met. La Barbaria Trail is a private road that does not meet the road standards of the Sustainable Land Development Code. La Barbaria trail is required to have a minimum of a 20-foot driving surface with two lanes that are 10 foot each, a 50 foot right-of-way, and adequate drainage. Many locations of La Barbaria Trail are 9 feet in width at minimum and 18 feet in width at maximum. There are limited areas that may allow for road width to be increased due to adjacent drainage and steep slopes in excess of 30 percent. The grade on this offsite road meets Code requirements and the road is in good condition.

Recommendation: Staff recommends denial of the Applicants request for a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent, a variance of Table 7-13 to allow the grade of the driveway to exceed 10 percent, and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 15, 2016. I stand for any questions.

HEARING OFFICER: Is there any planned new structures as part of this application?

MR. LARRAÑAGA: Hearing Officer Long, no, they are using the existing structures.

HEARING OFFICER: And there was a reference in your report to the driveway being constructed in 1994; was that by a prior owner of the property?

MR. LARRAÑAGA: Hearing Officer Long, I believe so. It was permitted but it wasn't constructed per the permit.

HEARING OFFICER: And also in your report when you're addressing La Barbaria Road it is stated that the grade on the road meets code requirements and the road is in good condition; is that correct? So it is just the width that is not adequate?

MR. LARRANAGA: Hearing Officer Long, that is correct.

HEARING OFFICER: Okay, thank you. All right, who will be speaking for the applicant? Anyone else? I can have you sworn in along with Ms. Jenkins?

[Those wishing to speak were during sworn.]

HEARING OFFICER: And if any of you do come forward to speak if you would just let me know so that it will also be on the record that you have been sworn in because there may be some others we'll need to swear in that didn't stand up at that time.

All right, you may proceed.

[Duly sworn, Jennifer Jenkins testified as follows]

JENNIFER JENKINS: Thank you, Ms. Long. My name is Jennifer Jenkins with JenkinsGavin and also I'm going to make a few other introductions here on behalf of Susan Carter and Sherry Scott. This would be Susan Carter and this would be Sherry Scott. This is Colleen

Gavin, also with JenkinsGavin. Gary Friedman, our counsel and Morey Walker with Walker Engineering. Everybody is here to answer any questions at any time.

So I have a brief presentation just to go over some salient points. Is it okay if I approach?

HEARING OFFICER: Yes.

MS. JENKINS: I'm going to put this one up first. So just to assist in kind of orienting where we are. Down here is Barbaria Road that comes off of Old Santa Fe Trail and that is a County road. It's a public road. And then at this point we get into the private portion of La Barbaria Trail. La Barbaria Trail is a private road within a 20 foot ingress and egress easement that the road is over 30 years old in that condition and as Jose said it's got very gentle grades that do comply with code and it is actually in excellent condition and I have some photos I can share with you about that.

As you wind in on La Barbaria Trail this outline in green here is the subject property. It is about 39.5 acres and at this point in the southwest corner La Barbaria Trail kind of continues this way and this would be Camino Tortoga so this is kind of the proverbial fork in the road and the Camino Tortoga comes up and serves some properties north of the subject and then it ends right around here. And then off of Camino Tortoga is the driveway that serves the subject property. And what we have, as Jose also said, we are proposing no new construction as part of the application for the retreat center. Commensurate with these variance request we have been running a parallel path for an administrative site development plan request that has been through the review process with County staff. So the site development plan for the retreat use, that processing is essentially wrapped up but it is subject to approval of the requisite variances.

So this is an existing workshop that will be remodeled to be kind of a yoga/art space – a gathering space of the guests. These are two existing casitas. Two bedrooms each and this is at the top of the driveway a 3,600 square-foot, this is the primary residence. And so the variance request before you are for the existing La Barbaria Trail and it's to note that, yes, the road has been here for over 30 years. A lot of subdivisions and a lot of building permits were approved by Santa Fe County with this road as access. So I would make an argument that this would be considered a legal non-conforming situation with respect to La Barbaria Trail.

The driveway Sendero de Corazon was permitted in 1994 under the EZO and at that time the maximum permissible grade at a driveway was 15 percent. The building permit at that time shows the maximum grade of the driveway at around 14 percent. Currently, there are a couple of spots where the driveway is about 17, a little over 17 percent and there is one spot, a short stretch, where it is at 21. So there have been significant improvements made to the driveway by the previous owner. My client has owned the property for less than a year and so the previous owner did significant improvements which I will point out – as I drop my board.

So the improvements include several elements one of which is on the driveway there are three very significant pull-out areas. What the fire department requires is 14 feet wide for driveway is acceptable and we have a 14-foot wide driveway. But when you have a longer driveway they want to make sure they have pull-out areas so in the event an emergency vehicle needs to access the property and people are exiting the property vehicles can pass one another. And so there are three significant areas which are easily depicted on the site plan but you can also see them here on the aerial. The previous owner actually worked with Mr. Gilmore from the County Fire Marshall's office to implement these improvements. To make the property as safe as possible recognizing we are in a somewhat remote mountainous terrain area. And in addition you can see right here these two little dots, these are two 10,000 gallon water storage tanks with their sort of by a draft hydrant that serve as a supplemental fire suppression system on the property.

As a condition of approval for this request the Fire Department is also requiring that the casitas be retrofitted with automatic fire suppression, sprinklers on the interior of the casitas. So interestingly, with the approval of this request, we are actually going to be improving and increasing the life safety measures that are already in place on the property.

So this is the site plan and you can see here this is the little existing workshop, these are the casitas, the driveway comes up, there is the first pull-out area, the second pull-out area for vehicle passing, here's the third and then there's a turnaround at the top of the driveway and again there are the storage tanks. I have a few photos for you to refer to. So the photos are numbered on the coversheet there so you can see at what point in the driveway the photo was taken and then the second batch of photos is of La Barbaria Trail itself. And La Barbaria Trail also is equipped with several pull-out areas to support vehicles passing one another where the roadway does narrow up somewhat because of the adjacent terrain.

And, also, as staff noted in their application, if this driveway was to be brought up to County standards we would be in here asking for variances to disturb 30 percent slopes, maybe to have retaining walls that exceed the maximum allowable height. I think it's important to recognize the environment we're in and this driveway is a very environmentally sensitive driveway that relates to its environment. So imagine that if we came in and said, Oh, we want it make it 20 feet wide and we want to make it 10 percent, I mean, just the level of disturbance and the loss of vegetation and the amount of scarring that would be implemented on this property would not be desirable by anyone.

So the key is that we have an existing driveway that was built under a different set of rules at the time. Significant improvements have been made and the key is when we talk about health safety and welfare what is in place here? I can tell you that this property has more fire protection measures than any other property in the vicinity in addition to the 20,000 gallons of water storage we will be retrofitting fire suppression in the casitas. So we are addressing those life safety concerns through those measures and we, again, all of these improvements were made in collaboration with the County Fire Marshall's department.

With respect to – as I mentioned we submitted a site development plan for Hearts Way Ranch to the Land Use Department which is a retreat use that is a permissible use within this rural fringe zoning district and I just want to touch on a little bit about the programmatic qualities of what is proposed. There has been a lot of misinformation floating around about what is proposed and Susan and Sherry have made a concerted effort, they have reached out to every single one of their neighbors in this community – been very transparent and very forthcoming about what they're proposing for the property. This is not a treatment center. This is a retreat for women who have already been through recovery treatment and need a place to develop better life skills before they return to their homes and their regular day-to-day life in order to ensure that they continue their healing and continue their recovery in a positive environment that they want to create here. Historically, the two casitas on the property were rented full time to full-time residents. And so— so basically, we have three dwellings on the property. Under typical traffic standards three dwellings would create 30 vehicle trips a day, back-and-forth, back-and-forth, back-and-forth, back-and-forth. So we're going from full-time residents in those casitas to part-time retreat guests that will not have vehicles. They will be guests on the property without vehicles. Any trips into town will be done as a group. So often any change of use is characterized as an intensification of use and I agree that in some instances that is the case but that is not the case here. It is actually, quite the opposite.

Santa Fe County Planning Division recommended approval of this application because of the negligible traffic impacts.

Lastly, there is a letter in the staff report from the Graeser McQueen law firm that we have a little bit of concern about because it represents that it is representing the wishes of the La Barbaria Trail Association. The reason that we are concerned about that is because my client has no knowledge of the La Barbaria Trail Association, its bylaws, its membership, its rules and regulations. We have no documentation as such that was available in her title search when she acquired the property and I have a letter that has been notarized that I have been asked to read in the record by Anna and Ken Spaeth who adjoin the subject property directly to the north and access their property via Camino Tortoga. So with your indulgence I would like to read that into the record and I have a copy for you as well.

HEARING OFFICER: I've got a copy of that.

MS. JENKIN: Is that the same one?

HEARING OFFICER: Yes.

MS. JENKINS: *Dear members of the Santa Fe County Planning Commission we, Anna and Ken Spaeth, own just over 20 acres contiguous to the north side of Susan Carter's property. We were surprised to learn that Chris Graeser and Catherine Joyce Coll were representing the La Barbaria Trail Road Association. We know there was a road maintenance agreement drafted in 1990 with an amendment in '93 but were unaware there were formal or legal association ever established.- We were never polled or asked if we were in favor or not of a proposed wellness treatment being established by our immediate neighbor. Because of this, we find it disingenuous that anyone is speaking on our behalf. With this in mind, we question what funds are being used to pay the legal fees to oppose the variances on behalf of the said association.*

We share the easement in question and support the variance application. We also support the driveway variance application due to the improvements made by the previous owners. Finally, as per Anna's previous letter submitted on July 21st we are in full support of the retreat being proposed by Sherry Scott and Susan Carter. Again, it is an enhancement to both our neighborhood and the Santa Fe community.

And, lastly we have 15 letters of support most of which I believe are in your packet along with 31 signatures on a petition. And in closing I would like to just touch on some of the elements of the intent of the Sustainable Growth Management Plan as well as the Sustainable Land Development Code. There is specific language about supporting local, small businesses especially ones that have low impact or supporting home-based businesses. In Section 3.1.1 of the SGMP it says, Need for appropriate business services and support for small business and home businesses. Small businesses are an important aspect to the local economy. Support, in Section 3.1.2., support and encourage local and small business.

This is the reason retreats are permissible anywhere in the County is because they are seen first as a quasi-residential use by the very nature of them. And we're dealing with properties that were built and existed prior to the adoption of the new code. I would find it challenging that there would be much of anything that can happen in Santa Fe County without some need for variance in accordance with the new more stringent code requirements. The key is, is the property properly suited and are there are appropriate measures in place to ensure the safety of the residents and the guests and I think we have demonstrated that there is.

With that, Susan Carter has a few words and then we would be happy to stand for questions and I would like to reserve the right for rebuttal prior to closing the hearing, thank you.

HEARING OFFICER: All right. I have a few questions that maybe you can answer first.

MS. JENKINS: Of course.

HEARING OFFICER: The casitas will have how many residents each?

MS. JENKINS: So the maximum they could have in them would be three each. There are two bedrooms. One of the bedrooms is a little larger. So the maximum could be three guests per casita. In our report we said four to six women at any given time could be residing in the casitas.

HEARING OFFICER: So they will not be utilizing the main house?

MS. JENKINS: No. The main house is – Susan and Sherry have a home office in the main house and so that's why we are creating the community room where the workshop is because that's where any – where the women gather together will primarily be happening in the workshop space that is being converted.

HEARING OFFICER: Will there be any other activities planned on the site other than the women that will be staying there? Will there be any day usage by others?

MS. JENKINS: No, no day usage by others, no.

HEARING OFFICER: And how about people come in to deliver any services? Yoga teachers, counselors, --

MS. JENKINS: Yeah, there could be – yeah, you know, this has really been this is our first step. So some of the programmatic elements are being developed but there may be an occasional yoga teacher or there may be an occasional art teacher. They may engage in – the residents themselves may engage in gardening on the property. You know some of these programmatic elements are being developed to support the intent of the program.

HEARING OFFICER: Okay. Let me ask you about the fire review comments that are in the staff report.

MS. JENKINS: Yes.

HEARING OFFICER: The first one says, Fire is requiring that roads shall meet the minimum County standards for fire apparatus access roads of a minimum 20 feet in width. So that you can't –

MS. JENKINS: Hence the variance.

HEARING OFFICER: Now the second part of that says, Roads, turnouts and turnarounds shall be County approved and all-weather driving surface and un-obstructed vertical clearance of 13-feet 6-inches; are you able to provide that?

MS. JENKINS: Yes. Yeah, because we worked with the County on designing those turn outs and those turnouts do meet the Fire Marshall's standards and we don't have any vertical clearance issues.

HEARING OFFICER: And then the second one says that, the Driveway fire access shall not exceed 11 percent grade in slope and that you are exceeding but then the second part says shall have a minimum 28 foot inside radius on curves; do you have that?

MS. JENKINS: Most places. There are a couple of little spots, as part of the condition of approval that we will be widening out the turning radii in a couple of spots. We did several site visits with the Fire Marshall's department and identified a couple of areas where they felt the turns were a little snug so prior to finalizing the development plan and obtaining a business license there are a couple of spots where we will need to make some improvements on the turning radii.

HEARING OFFICER: You will increase that?

MS. JENKINS: Yes.

HEARING OFFICER: And then the third one is the entrance gate at the top of Sendero Del Corazon shall be set to open further; are you able to do that?

MS. JENKINS: Oh, yeah, the gate. There's just some vegetation behind the gate they just it to open a little wider, so yeah. That's not a problem.

HEARING OFFICER: Okay, and then the next one is installation of automatic fire protection sprinkler systems in Casitas A and B and you've done that.

MS. JENKINS: We haven't done that but that's a condition of approval

HEARING OFFICER: But you will. Okay.

MS. JENKINS: So those will be installed prior to issuance of any business license.

HEARING OFFICER: And then the fifth one, states that this development shall comply with all applicable regulations because of the area being rated Wildland Hazard area.

MS. JENKINS: Vegetation management, yes. So we'll be doing an inspection on the vegetation management prior to business license to determine if there's any thinning of vegetation that close to the structures. A fair amount of that was already done by the previous owner but we'll be doing an inspection with that particular staff person that implements those provisions and we will do a site visit with them to determine where we potentially need to thin some vegetation.

HEARING OFFICER: So that ties into the last one that it be a vegetation management plan.

MS. JENKINS: Exactly.

HEARING OFFICER: Okay. Let me see if there's anything else. Okay, that's all for now. Thank you.

MS. JENKINS: Thank you very much for your attention.

[Duly sworn, Susan Carter testified as follows]

SUSAN CARTER: I just briefly wanted to introduce myself and Sherry Scott, the applicants. Sherry, could you please stand up for just a second please. This is my business partner, Sherry Scott. I am Susan Carter. Sherry and I have known each other for 42 years. We met in college as sorority sisters at Texas Christian University. I just wanted to give you a little background on Sherry. She has been -- I'm going to introduce her first. She spent her life as a caregiver and public servant from early in her career risking her life as an RN, as a care-flight neonatal intensive care nurse, continuing her education to become a therapist and working with law enforcement and human service agencies. She has had an extensive career in managing cases of child abuse, family domestic violence, providing counseling and rehabilitation to sex offenders and victims of human trafficking. Sherry also managed to run the pediatric psychiatric division and center for pediatric eating disorders at Children's Medical Center in Dallas, one of the top pediatric hospitals in the country and the fifth largest health care provider in the nation.

Now, having a Ph.D. in family counseling and being a nurse practitioner in psychiatry, Sherry has chosen to dedicate her time working in the ER of the county's -- one of the counties, our county in Dallas serving the medically underserved. She also teaches those who want to become those that want to become a nurse practitioner and then she operates a private practice.

I have come from the world of non-profits. So I've had the privilege of being a founding employee of Susan G. Komen for the Cure, breast cancer organization. I ran -- I had the privilege of having a front row seat in the fight against breast cancer and ran all their marketing and branding for over 20 years. So we created the pink ribbon and that was kind of an amazing experience for me in addition to the Race for the Cure series.

Following that I served as the CEO of the Arthritis Foundation South Central Region and served the people in Texas, Oklahoma and New Mexico. I left that position in September of last year and I wanted to do what my friend does, Sherry, I wanted to be on the front lines and I wanted to be helping and I wanted to be hands-on. Thus we got together and we starting thinking what is the real need out there. We discovered through Sherry's work as a counselor that women who go through treatments have a real serious need for aftercare once they leave treatment in a sober living environment. There are very few facilities that exist where women can go to come home to themselves in a way that they never knew they could. You can take away the drink and you can take away the drunk but until you get to the heart of the issue of the problem and you really help those women learn what those issues they're going to continue numbing out. And so we want to bring women to a healing environment to a place that we feel women will feel safe and comfortable and be given the tools that they need so that when they go home they won't have that need to numb out and Santa Fe offers that for us.

We found this property on La Barbaria Trail on Sendero de la Corazon and we found this property. The owner as everyone has testified today has put in these amazing improvements to make this property incredibly safe and healing for his wife who happened to be suffering from severe rheumatoid arthritis and I think when he found out what I was doing with the Arthritis Foundation and then he heard what Sherry and I were planning to do he was very invested in helping us make this work. Once we found out that the zoning, you know, that this was going to be a zoning issue in December we, you know, put all the due diligence into looking at the property to make sure that it was going to go through way before we would ever consider buying the property. When we found out that the zoning did actually take place, the rezoning, and that it was, in fact, going to be a permitted use, we did decide to put a contract on the property. And it was a dream come true because the owner was able to convey all of the furnishings and everything to us in this amazing healing facility that we believe to be Hearts Way Ranch.

I am just beyond excited with the opportunity to be able to do it and I just hope that these variances don't come into play to block what we feel can be a lifesaving endeavor for a lot of women.

Just to give you a brief – again, reiterating what Jennifer said, it's a recovery residence. It's for four to six women who have come out of treatment they literally come to us to find, you know, a way to come home to themselves in a way they never knew they could. We are basing it on four spiritual tenets of the Zia Sun symbol. And those tenets are a strong body, a clear mind, a pure spirit and the dedication to the well-being of others. Which means they each have to have a service commitment in the community. So we will be making sure that those four elements are integrated into the daily schedule of each woman, you know, through our programs. And then reiterating what everybody said too, they will not have vehicles. They will be traveling to and from town as we do. And they will be with us at all times. And, again, the previous use of the property was for long-term tenants.

So you know, Hearing Officer Long, we hope that you will not let these variances stand in the way of the healing work that we hope to do on this amazing property in La Barbaria Canyon. We feel certain that we will not disturb or cause disturbances of any kind to our neighborhood. As a matter of fact, we hope to bring neighborhood collaboration as well as economic development and philanthropic service to not only the neighborhood but to the greater Santa Fe community.

Thank you so much for this opportunity.

HEARING OFFICER: Thank you. Let me ask you a couple of questions. It sounds like you've done a lot of homework and I'm sure analysis and studies not only from your

many years in these fields but maybe also specific to Santa Fe, how long will the women be staying, the four to six women?

MS. CARTER: It's all based on what their clinician, that they're be treating, you know, who refers them to us and their clinician's conversation that they'll have with Dr. Scott, Sherry Scott. And they will have that conversation and as that woman heals, you know, that will just be determined. I mean sometimes it could be 30, 60, 90 days sometimes even more.

HEARING OFFICER: And do you expect to draw from the Santa Fe area, the northern New Mexico area or is it broader than that?

MS. CARTER: It is broader than that. It would be – it really truly is referrals from probably treatment centers. Treatment facilities that are looking for the types of facility that we have. Also given the type of personnel that we have with Sherry's background being a nurse practitioner in psychiatry is something very unique to a somber living house when you've got women you might, you know, need medical oversight as well. So, you know, that's a real benefit in our place and not to mention that Santa Fe in and of itself has such a – offers such a healing environment and so many amazing practitioners in this area.

HEARING OFFICER: Thank you, it was good to hear that presentation.

MS. CARTER: Thank you.

MS. JENKINS: So that concludes our presentation. I did one to point out one thing that I overlooked previously and then I will sit down.

So as you can see here, you see little stickers, those – this as outlined in green here as I pointed out before is the subject property, and the stickers indicate residents who wrote letters of support. So as you can see very contiguous letters wrote letters of support for the application. That was the purpose of the stickers so I just wanted to point that out.

HEARING OFFICER: Thank you. All right we will proceed with the public hearing by asking if there is anyone here who would like to speak in support of the application for variance. I know that we had the letters and the petitions as well that have been received in the record but there is a gentleman here. Would you come forward, please, sir. And please state your name and address for us and then whether you've been sworn in.

KENNETH ROWLEY: -- Rowley, 38 Camino Tortuga, Santa Fe, New Mexico, 87505.

[Duly sworn, Kenneth Rowley, testified as follows]

MR. ROWLEY: I'm a little hard of hearing and I'm going to have to talk loud so feel like I'm yelling at you –

HEARING OFFICER: That's fine.

MR. ROWLEY: -- but I want all of the people to hear what I have to say. I think it is a very, very important thing for us to consider and so I'm directing this to you and I am also directing it to my neighbors. Something has happened here that probably shouldn't have. Anyway, this is a story of what is happening in our backyard. Why, such efforts to avoid a good thing happening. I'm Ken Rowley. I'm a retired gynecologic oncologist. I have lived in Santa Fe County 24 years. I live besides Susan Carter and Sherry Scott. The work I did as an oncologist was to take care of very ill women patients with cancer. These women were so sick they spent most of their times in hospitals and doctors' offices. So involved with their illness they became lost from their lives and the world they live in.

Now after therapy and with remission or cure, they had many different feelings: guilt, unworthiness, inadequacy, lost of self respect, unable to meet the world, the list could go on and on. And for those who have cared for cancer patients know what I mean. Now many of these

feelings the cancer survivors go through are very similar to the addict who survives another life threatened disease. They have been through therapy and now they need our help. Yes, we are our brothers' keepers. Yes, we help them to forgive themselves for being an addict. Yes, help them reconnect with society. Yes, help them not to fear but to love. Yes, help them to realize they are one of the creator's, one with the creator and daughters of the creator. If you were to know Susan and Sherry as I know them this is their mission. There are many other problems these women have and most of these are known to both Susan and Sherry because too they have suffered the misadventure of addiction. Maybe that is why they are so driven to help their crippled sister.

For anyone who continues to be against this divine venture I recommend go out into our wonderful forest, sit on a log, be very quiet, and ask yourself why? I personally feel that the mission of these two women is wonderful and they were attracted to do it here in La Barbaria Canyon on sacred land a sacred endeavor. It was no mistake.

I would never want my grandchildren, all 13 of them, to know I was an obstruction to something I believe is god's will. This home for six or fewer women is not a place of active treatment for substance abuse. It's a place so beautiful and peaceful, just two blocks down from heaven where the activities are not drug therapy. People are mistaken. They think it's that. But it is how to recover the soul.

But we do have a problem right here on La Barbaria Trail if you already living here speed up and down the road, brains saturated and bellies filled with alcohol they don't see anything wrong with that. Yet there are some of the people against Sherry and Susan influencing certain neighbors; why it is misinformation. I've read some of these letters and I know. Susan and Sherry two wonderful people. Not treating disease but helping women in small numbers, only four to six people at a time find their way back after a soul wrenching experience just three little variances to combine the use of a private road, the best maintained road in La Barbaria Canyon, that in 20 years of existence has never had an accident. Many times I've driven or walked that road in snow, rain, sunshine and never had any difficulty. A road that has very little vehicular traffic and will have less since the two other casitas will not be rented, only occupied by women who don't have cars.

Ma'am, I ask that you recommend these three variances knowing much good will come from it.

This whole La Barbaria episode reminds me of a story about the man called Jesus and how it applies to Susan and Sherry. First, the people did not understand Jesus' message and what he was about. Sounds a little familiar doesn't it? Fearing what he was doing – fear, fear that's the worst thing and our fear turns into hate. Hated that fearing that what he was doing and they hated and they hanged him on a cross. Hopefully, we people of the 21st century can do better. Let's not make the same mistake. Let us feel honored and proud that we can be helpful as Susan and Sherry usher in – it's a new paradigm. This is all new stuff and this is important stuff because this may be a way in which to help recovering people or those who have swayed to return and recover their souls.

So what I said in this little ditty: If you don't understand, Oh what a pity. Maybe you'd be happier living in the City.

Thank you very much and I hope I've given a little different slant to it and it will help some people to stop and think why all of this crap. I don't believe the variances are – we're bringing on situations to try and stop a paradigm that will be very important to this whole country.

HEARING OFFICER: Thank you. Thank you for your comments.

MR. ROWLEY: Thank you.

HEARING OFFICER: All right is there anyone here who would like to speak in opposition to the – you're in support? Okay so everyone who wants to speak in support why don't you stand and you all can be sworn in. All right come on forward.

[Duly sworn, Roger Said, testified as follows]

ROGER SAID: My name is Roger Said and I live at 3005 Monte Sereno Drive, here in Santa Fe. And some four years ago my family and I chose to move from the flat land in Texas and the prairie to Santa Fe partially for the mountainous beauty but also I think everyone here has spoke to today at some level to the healing quality of Santa Fe and I just wanted to make two quick points and then I'll move on.

One is that I have traveled the road both the public La Barbaria Road as well as the private La Barbaria Trail on several occasions in two-wheel drive vehicles and found no issues with maneuvering to drive safely. And this is also coming from somewhat who also didn't drive the mountains very frequently. I was very comfortable with it and found it to be very well maintained and I also know that they have contracted with a snow plow provider that on snowy days that there is automatic service of the road for the snow issues. I don't really see a safety issue from that perspective.

We built a house in Santa Fe when we moved some four years ago, and this was my introduction in building in extreme elevations and steep climbs and I learned a lot. And I also had to go through a variance with the traffic department and also with the Santa Fe Fire Department to meet the codes and I learned quite a bit about that including installing sprinkler systems to meet a variance for the same purpose. I had a steeper incline that required some accommodation and we installed fire suppressant sprinklers and made some other adjustments working with Fire Chief Gonzales and I think that where there's a need there is a way to work out differences.

In terms of a need, I've known Susan Carter for over 40 years and can speak to her high integrity, her volunteerism and her sincere intent. And I've known Sherry Scott for 25 years and know of her professional background. It would be – if Santa Fe wanted this type of facility they would have trouble recruiting this type of talent to conduct what they're doing and I can say without reservation they're doing it for the right reasons. And, finally, I would like to say that if this is a healing city, a healing environment, then this is the type of environment that you want to create. Thank you.

HEARING OFFICER: Thank you. All right, come forward.

[Duly sworn, Ann Reese, testified as follows]

ANN REESE: My name is Ann Reese and I live at 3005 Monte Sereno Drive, Santa Fe, 87506. And I moved her with my husband who had just spoke a minute ago three or four back from Dallas. And I wanted to say that because it gave me the great good fortune and opportunity to know Susan Carter who I have known for over 40 years as we grew up together and went to high school together. I'm a marriage and family therapist and a licensed clinical social worker from Dallas. I ran a family therapy program for a very large private non-private and through that work came to know Sherry Scott who I've known over 20 years and I can speak her unbelievable expertise and the regard the community has for Sherry is indescribable. She is a skilled and gifted clinician with a wide variety of clinical skills so knowing Sherry's clinical expertise and Susan's development and non-profit expertise and working from the heart I give them my highest, highest endorsement and know that they will be an incredible asset to the community as well as to the country. As a therapist I often had difficulty finding after treatment programs, retreat centers for women to continue their recovery. So again, my highest endorsement, Thank you.

HEARING OFFICER: Thank you. Okay, I thought I saw some other hands. You can come forward, ma'am.

GORDON HARRIS: Hi there. Gordon Harris. I live at 191 Overlook Road, Santa Fe, New Mexico 87505 and I have not been sworn.

[Duly sworn, Gordon Harris, testified as follows]

MR. HARRIS: William Gordon Harris. I've lived in the neighborhood, sort of La Barbaria Canyon neighborhood since 1997. I'm very familiar with a lot of the houses there, the residents, they are my neighbors and the road systems there as they interconnect and as we all drive them. In addition, I am a volunteer for La Canada Wireless Association. We are a 501 (c) 12 non-profit, volunteer-run internet service provider. We provide internet services for underserved rural portions of the County of which La Barbaria Canyon is one. Most of the folks you are both for and against the applicant on this issue actually have internet service by virtue of the fact that I've volunteered and climbed on their roofs and set up internet service for them.

This experience doing this volunteer work has give me an appreciation for the road systems there and I can tell you that from my personal perspective as a neighbor, La Barbaria trail and Tortoga and the driveway going to Susan and Sherry's property is actually the envy of many of the other residents that live in adjacent homeowner associations including my own, the Overlook Homeowners Association. The road is actually in very good shape and having driven it quite a bit I feel that I am in a position to attest to that.

Additionally, even though I am not an adjacent neighbor, I am close enough that I can actually see all of the buildings on Sherry and Susan's property from my deck. So I'm close enough to that. In my interactions with Susan helping her get the internet at her property I was very, very favorably impressed by her integrity and her thoughtfulness. And to that extent, as a neighbor I have no qualms whatsoever running the sort of enterprise that she's proposing to run there, and, in fact, I feel a certain amount of pride that she has chosen our area in which to connect this enterprise and to offer this help. So, I am unequivocally in favor of this applicant's petition.

HEARING OFFICER: Thank you. Okay, ma'am.

[Duly sworn, Sandra Rowley. Testified as follows]

SANDRA ROWLEY: I'm Sandra Rowley and I live at 38 Camino Tortoga and have lived there for 19 years and our property - I'm the wife of Ken Rowley - our property does border on Susan and Sherry's property. So we are neighbors. And I have known Susan since she moved in in January and she's been a wonderful, wonderful neighbor. And I just wanted to say that I read a letter in opposition in their variances and their coming there. And I know that the people that wrote this letter live in our neighborhood are new members of the road association and they don't even know Susan. They have never been up the road. They've never been to her house. They don't know anything about her and so therefore some of the things that they say are misinformation that they have received. They have received misinformation. And, I was - Catherin Coll who is now the chairman of the association she did for many years it was a co-chairman and we had a man that was the co-chair and now both of those people have left. And they were always in charge of the road maintenance. And, no, I was - I was - Catherine Coll called me a few months ago and wanted to know if I knew what they were going to do with their property, my neighbor, and I said, yes, I certainly did and I support it. I welcome it and I will do anything I can to help them. I think it is a very good thing for our neighborhood and she quickly said, Oh, okay, goodbye. So I'm not represented by attorney Graeser and Catherine Coll and the road commission. I have not paid my dues for two years and the reason I have not is because they don't - Catherine Coll since she doesn't have the co-chairman anymore, the man, we just cut

down trees. There's a great fear in our neighborhood of fire so we have fire remediation and that's where our money goes and we have plenty of money to keep up our road and have but now we're cutting down trees and it's all going – not all, but most of it is going to fire mitigation. So, I'm not paying for that. This is not what – this is not why our association was formed for. We're a road maintenance neighborhood association to keep our road up. So if we want to have it go fire mitigation then maybe another association should be formed. So I pay the man who is in charge of keeping up the road who is also a member of the association.

The other thing is that just some of the things are just misinformation and I feel really bad about it and I know where it comes from and I just want to in my closing remarks say a few things that there's misinformation. This man and one don't even know Sherry. I don't even know who they are. We don't have meetings anymore. It's – the owners of Hearts Way Ranch do not even pay for the maintaining of La Barbaria Road they only moved her January. We haven't had any maintenance this year at all. The other thing, some of the words they used are just misinformation and it just makes me really sad because we're a wonderful community and I don't like to see us split with each other over things like this. This person calls their venture an inappropriate commercial use, commercial venture, an alcohol treatment facility, a sober wellness retreat, which is irrelevant to the variance. While I think what Sherry and Susan are going to do is not irrelevant to what the variance I think it should be approved. Proposed rehab they call it. Furthermore, this is a dangerous attempt by applicants to cloak themselves and their proposed facility in an altruistic endeavor to benefit society – a commercial venture, proposed clinic, this is not a charitable institution, and you should not be swayed by the applicants' characterization of their business of as being somehow for the benefit of mankind and not for the benefit of their own pocketbook in order to make it – you know we don't know, we don't know the motivations of any other person. We don't know their heart. This person seems to – doesn't even know them, know what all of their motivations are. I mean I've been married to my husband and it will be 60 years in March of next year, I don't know his heart.

HEARING OFFICER: Ma'am, are you reading from one of the letters in the packet?

MS. ROWLEY: Yes.

HEARING OFFICER: Okay, so I've got that. You don't need to read it.

MS. ROWLEY: Yes, all right. You've got that. So then I want to speak to the increase in the road. I think we made the point that it is not going to increase traffic on our road and I want to say that I have lived her 19 years and I've lived there with the casitas being there and rented out and the last person who rented out one of the casitas it was like she had all of her relatives, her family, everybody visited to her because they wanted to visit Santa Fe. We had so much traffic we were like downtown Santa Fe because she was like a hotel for all of her family. We had a lot of traffic and the other person that rented the casita was very quiet and had a job here and worked a lot.

The other point I wanted to make is that, the applicants are far from acting in good faith; they are acting in good faith. Nothing has been spoken to today but when – I just want to say that I am not – Mr. Graeser and Catherine Coll are not representing me and they are not representing the La Barbaria Trail Association because, as they say they are, because there are many of us who are members and neighbors who do not – who do support this variance.

HEARING OFFICER: Okay, thank you, ma'am.

MS. ROWLEY: Oh, may I say one other thing?

HEARING OFFICER: Yes.

MS. ROWLEY: I just want to say something about the natural. It's very beautiful out there and it's very mountainous and nature is very meaningful to me and I just wanted to quote something that Albert Einstein said, Look deep into the eyes of nature and everything will make sense.

HEARING OFFICER: Thank you, ma'am.

[Duly sworn, Jain Lemos, testified as follows]

JAIN LEMOS: My name is Jain Lemos, and, yes, I was sworn in with the group. And I just wanted to say that my address is 40 Craftsman Road, here in Santa Fe. I've been working with Susan and Sherry over the past six months and going up to the property on a weekly if not daily basis during that time so I've seen the roads in quite a few different weather conditions. The roads are just beautiful there and within Susan's property the roads are beautifully maintained and I know that she is putting in a lot of her own resources to make sure that the trees are always trimmed, brushes always cleared – I mean, there are landscapers that take care of it. It's really a beautiful road. I've never had any problem trying to pass someone. I think maybe once somebody had to maybe back up at some stretch on the road but it's really a very lovely property.

I understand, having lived in areas where there is earthquake and fire danger in California and it is important that the Fire Department can get out there but I think as everybody has pointed out here, especially their team here, we're doing everything that we possibly can to make sure that all of that is mitigated with all the steps that need to be taken and we really want to make sure that everything is done so that life saving is the number one priority there. That's really key.

Also, I just want to point out that the property was advertised as a family compound and these casitas are 16 square foot casitas each so even though there is two bedrooms and only three beds in each one as Susan and Sherry have configured it for their retreat, any other people who just bought it as private citizens and not to run it as a business could have had quite a few people there, I mean I think easily, 12 to 14 adults could live on that property and let's say each one of them had a car and each one of them drove to work each day, each one of them had friends visiting – I mean, you could have so much traffic on that road without it ever having to be a business.

I think it was zoned for this type of usage, in fact; other zoning allowed could be a skating rink or a movie ranch and could you imagine if somebody was trying to put a movie ranch in that location. You know, it would just be outrageous in terms of the traffic and impact on the road. This is very very low impact and I think you know so somebody built the road why back when a little too steep, it's kind of a mystery as to why that was ever granted. Maybe it was old rules but the pitch is steep in a couple of places but I think a variance could easily be granted to given the circumstances. Thank you very much.

HEARING OFFICER: Okay, thank you.

[Duly sworn, Liz Sheffield, testified as follows]

LIZ SHEFFIELD: My name is Liz Sheffield and I live here in Santa Fe, 17 Camino Delilah. I had the privilege working with Sherry and Susan in finding the perfect place for their somber living environment and I've never met two people that have such ultimate and intense respect for.

I'm a real estate agent and I've been on every road in the city and county and that's a fantastic road and I also want to speak of my person experience with the nature of alcoholism. My partner was an alcoholic and – she went to rehab and they wanted to her to go to a place like this and there was no place to go. They wanted her to reinvent herself. To be around sobriety and

support and she ended up coming back home here in Santa Fe and -- so I know personally that a thing like this could help people. She died --

HEARING OFFICER: I'm so sorry.

MS. SHEFFIELD: -- because of a lack of support. And I just can't say how much something like this would mean to me and other people who have gone through this experience.

HEARING OFFICER: Thank you. Thank you for sharing that.

MS. SHEFFIELD: Thank you.

HEARING OFFICER: Okay, who do we have here today who would like to speak against this application? Mr. Graeser, okay, why don't you come forward first. I assume you may be speaking for some others that are here today, but they can let me know that.

CHRISTOPHER GRAESER: Thank you, Hearing Officer Long. Christopher Graeser, 316 East Marcy. I'm speaking on behalf of the La Barbaria Trail Association, which is an incorporated association through the direction of its chairperson, Catherine Joyce Coll.

I don't know Susan Carter. I don't know Sherry Scott. I don't know the work they do. It sounds beneficial. It sounds needed. That is not why we are here. We're here to discuss La Barbaria Trail, Camino Tortoga Sendero de Corazon and code requirements.

The roads don't meet current road standards. The lots of there would never be allowed to be platted now. You wouldn't be allowed to build those roads now. Jennifer mentioned that La Barbaria Trail in particular should be seen as a legal non-conforming use. I can see that analogy, of course, it is black-letter land-use-law that legal non-conforming use are discouraged and they shouldn't be expanded. And here the expansion is, moving this property from a residential use to a non-residential use. There are a lot of people that live up there now and they deal with the roads but we don't need to make them worse.

Let me talk about some specifics. The first one is notice. The requirement of the code is that the notice be visible from a public road and the posted notice was not. It was posted on the property visible perhaps from Camino Tortoga but from the nearest public road which is La Barbaria Road. So it did not meet notice requirements from that perspective.

The second deficiency in the notice is that the notice board, it's in your packet at NBA 45, describes two variances. The request is for three variances. The third one being a variance for the road standards. That is not listed on the notice board. So it doesn't meet the notice requirements.

Madam Hearing Officer, I have submitted I have submitted a detailed letter. I know that you have read it. I don't want to belabor it. I want to hit the high points because they are important. The purpose of the road standards is to "provide for the safety for both vehicles and pedestrian traffic." They quote from the Sustainable Land Development Code. And this is not old law. This is adopted within the last year. This isn't simply a series of dimensional variances such as increased height, diminished setbacks, things are typically more aesthetic. These are variances from safety criteria which should be given the utmost scrutiny.

I go through the legal requirements for granting a variance. I know that the public interest here is particularly compelling given the fire danger exacerbated by current inadequate emergency vehicle access. And the requirement for you to grant a variance is to find that this is in the public interest and diminishing safety certainly is not. The applicant's variance letter focuses almost entirely on the driveway variances not addressing the other variances. I don't think you can make a determination if you don't know what you're giving a variance to. Is the variance to the slope, the first variance, the first slope variance; is it de minimis? Is it significant? What are the slopes that are out there now versus what is required? You're simply not given that information in the packet.

The more problematic criteria for the applicant is unnecessary hardship. This is a term of art. It is defined in New Mexico case law and a primary focus is whether this parcel is distinguishable from other properties subject to the same zoning restrictions. And test, this comes from Powell quoted in the Downtown Neighborhood's case, the test is whether because of the differences the owner will be deprived of a reasonable return on his or her property under any use permitted by the existing zoning classification. The answer is a resounding no, Madam Hearing Officer. First of all there's no differences. There's no testimony there's any differences. In fact, I take that back, there was testimony there's differences today and what that testimony was is how nice the onsite driveway roads are versus other roads in the vicinity and that goes in the very wrong direction to grant the variance. The only difference is this property is closer to conforming. That certainly doesn't render it subject to unique circumstances under any use permitted by the existing zoning classification. That use includes residential which is the current use, historic use, the use the property was listed for sale for, it's the use that was the current use when the decision to pay for the property – what the applicants paid for it was made, and it continues to be the appropriate and reasonable use. There is no interference with reasonable use of the property. There is no interference with obtaining a reasonable return from the property having bought it as a residence and continuing to be able to use it as a residence.

The owner testified that they did all their due diligence but I'm sorry that simply is not true. The requirement, the 10 percent road requirement is from County code. The 11 percent road requirement is from the 1997 Uniform Fire Code, it's been around for 20 years, the 20 foot width, the 11 percent grade, 1997 Uniform Fire Code has always applied and it clearly applies in the County. And it was represented from the Fire Department here who will confirm that requirement applies to Camino Tortoga, La Barbaria Trail, and to Sendero de Corazon. So due diligence was not done. Simply assuming because it is allowed by the zoning classification like the ice rinks and whatever else was talked about doesn't get you past the hurdle of all the other requirements in the code particularly safety requirements for access.

The application letter, my response letter addresses the first two variances and they have subsequently added a third variance. The code requirement is a 20 foot road on a 50 foot right of way. What we have now on La Barbaria Trail is a 20-foot right of way with a road as narrow as 9 feet, this is in the staff report. As narrow as 9 feet, nowhere greater than 18 feet.

I've submitted a letter from the prior captain of the Fire Department explaining the problem with the narrow width is then not only can fire trucks not pass out there but people trying to get out away from a fire create a bottleneck that fire trucks can't get in and this area is in an extreme fire danger area.

HEARING OFFICER: Are you saying the third variance that your letter doesn't address that was added is the width of the road?

MR. GRAESER: Correct. Width of the road and width of the right-of-way. The requirement is a 20 foot road on a 50 foot right-of-way with no more than 11 percent grade – sorry, 11 percent on the Fire Code and 10 percent on the County Code. And those requirements are not met significantly on a road that goes down as low as 9 feet.

So you got a lot of letters, you got a petition, you got testimony from folks and I think two things impress me about those letters and testimony. One is how passionate they are for the work that Ms. Carter and Ms. Scott do. The second is how irrelevant their testimony was to granting a variance to fire code and county code restrictions. It's worth noting that there were only three people in all of that comment who live in the area and will be subject to this on a daily basis. The

rest are people interested for one reason or another be they high school friends, church friends, college friends, etcetera.

And, of course, Hearing Officer, we are not opposed to the work being done. It seems like a needed service to – I won't go there as far as some of the comments, the biblical references, but we are absolutely not opposed to this work. The problem is doing this work in this location violates County code and it violates safety standards.

Addressing a couple of the comments that were made: Ms. Jenkins said it was important to recognize the environment we are in. As you'll see by Mr. Chilton's letter from the fire department, the environment we're in is extreme fire danger environment. There's a lot of discussion about how the impact is going to be less than what it was residential. There's no traffic analysis for us to know that and I've suggested that it is required by County code but one hasn't been submitted. Ms. Jenkins said the analysis for you is the property suited for this use and I will submit that is not the analysis. The analysis is the Code and case law required variance analysis with which I know that you're familiar.

The variances aren't blocking lifesavings endeavors. What's blocking that is deciding to engage in this business in an area that the Code doesn't allow you to engage in it. And I'll take issue with the comment that you need a variance to do this anywhere in the County. That's clearly not the case.

I think that's most of what I have to address. I do encourage you to confirm with the representative of the Fire Department that the slope width requirements do apply throughout the access roads there and there are numerous instances in which they don't. Like I said, the entirety of La Barbaria Trail violates the 20 foot requirements. If you look at the plans and profiles that are in your packet for the driveway and see how many of those are above 10 percent and how much length is above 10 percent, it's a significant portion. It looks to me over half going up in the twenties, double the allowable slope.

The roads don't meet the standards. They can't be improved without getting a variance to improve them. We ask that you leave a bad situation as is and don't allow it to be exacerbated. Support staff recommendation. Support the Fire Department recommendation. There has been nothing in the testimony today that addresses the continuing lack of evidence in the record supporting the variances. Thank you.

HEARING OFFICER: Okay, thank you. Let me ask you about the association because we've heard some dissention from people in the area who are ostensibly members of that association. How did the association arrive at its position against the granting of the variances? Was there a member meeting called? Did the board vote on it and how many members are on the board?

MR. GRAESER: I don't know the answer to that. Ms. Joyce-Cull can probably address that but I think it would be unusual to define an association that everyone agrees.

HEARING OFFICER: Okay, thank you. Okay, ma'am.

CATHERINE JOYCE COLL: I'm Catherine Joy Coll and I have been the neighborhood chairman for probably a little over 10 years. The neighbors – and I'll just try and cover a few little things that came up very quickly.

HEARING OFFICER: Ma'am, would you please give us your address.

MS. COLL: 83 La Barbaria Trail.

HEARING OFFICER: All right and have you been sworn in?

MS. COLL: No.

HEARING OFFICER: Okay, let's do that.

[Duly sworn, Catherine Joyce Coll, testified as follows]

MS. COLL: The neighborhood association was founded before Tortoga Road was actually developed. So now of the people there are legal members of the association. I think there are 18 association members. You have a letter that I wrote on behalf of the association. Some of it is open land, four pieces are just raw land including the piece, the space here and I want to address that next, presumably owned.

So the Road Association, I took a telephone poll which is the way we do many things to vote on this and the vote was unanimous to oppose it with the exception of Ken and Sandra Rowley who spoke in favor today and one other couple that live below the Sheltons. Jay voted to protest it and then met Susan and came over to my house and said I don't want to upset anybody, I'm not going to take a position and he did write a that is in your packet and he ended his letter by saying, if it's illegal to put it there then it shouldn't be there and if it's legal I guess I support it and then they promptly left town. So Jay just wants to get along with everybody and he and Katherine always have.

So that's how we came by this. Now, I think someone, Sandra or someone suggested that the road association money was going to pay our lawyer, Chris, who is my lawyer and also the association's lawyer and that is untrue. The neighbors have been contributing \$250 lumps which so far have covered all of our legal fees. We can by law use association money but we haven't had to do that and we fought another development several years ago and won and the neighborhood paid all of those legal fees also. We have never touched association money.

Now as far as the Tortuga people go, they were up there before my husband and I bought our house but they had always paid road dues and Sandra, you're wrong, you did pay last year.

[Speaking from the audience Ms. Rowley stated that she did not.]

MS. COLL: Yeah, you did.

HEARING OFFICER: Ma'am, let's not get into a dialogue with the audience. Ma'am, please, please let her speak.

MS. COLL: That property has been problematic for the owners for some time. The Starkes owned it and they did a lot of road work and Rick was retired and enjoying and he had a lot of heavy equipment up there and we became good friends with them. So I asked him if he'd like to be co-chairman and supervise the road work and I would do everything else, the newsletters, the banking, the fire mitigation and that is the way that we did it. And then they sold the house to the Loftons and Rick called me and said that the new owners, he thought, would be happy to help with the road stuff because Craig said he was going to do a lot of driveway work and have heavy equipment up there. So I called Craig and he agreed to. So for three years they handled the road grading. And the Rowleys are always difficult to get dues from and so I had asked Rick when he was co-chairman to call them and get their check which he did and after Craig [sic] did I asked Craig to call and get it which he did. So that is how that evolved. I have been the road chairman through the whole thing. I have actually tried to get rid of three times and nobody else seems to want it. At the moment, Cathy Deuschle, the new owners of 7 Owl Creek that wrote a letter that you have, Cathy has agreed to be co-chairman and help with whatever comes up. So, I have Cathy's help.

Now as far as this letter from the Spaeths goes, I've never heard of these people and I think neither has anyone else in the neighborhood. They own a parcel adjacent to the Rowleys and Sandra told me four or five years ago that it came up for sale and they bought it. And she told me they bought it with difficulty but now they had 27 acres. So that was the last I heard. That woman

has never paid dues. There's no building of any kind on that property. They live in Colorado. They have nothing to do with anything here except that they're relatives of the Rowleys.

So that's all of that now as far as fire goes, we've had meetings with the last five fire chiefs on fire mitigation and the problems and all five of our past fire chiefs have told the whole neighborhood association that it is quite likely that in case of a catastrophic fire, fire trucks will not be able to get up our road. In fact, I gave Jose and Chris has a copy of the letter that Chief Chilton wrote and then the current chief whose name I've forgotten for the moment wrote a letter confirming that everything Chief Chilton wrote was right. This is Hondo Fire Department. And right now their protocol says if a wildland fire starts in La Barbaria Canyon then the trucks are to go to the end of the pavement which is 1.25 miles in on La Barbaria Road and they are not to go further unless they feel it is safe and exercising due caution. Now, all five of those chiefs have told us that it is highly unlikely that a truck will be able to get up La Barbaria Trail. There has been two fires there and what they did was park a water truck at the foot of the road, one was lightning and one was ashes, at the foot of the road and they got those pickup size trucks and hauled water up. Now I know they have tanks at the Sendero property the problem being you have to hook a fire hose to those tanks. They do have a hose nozzle thing on them but that won't make enough water to stop anything but maybe a small yard fire. Unless you can get a truck up there you don't have giant nozzles to actually put out a fire. So it was fine to put all of that in but it's not going to help if there's a fire and the trucks can't get up. We've been told that we'll have to shelter in place up there and you're more than welcome to call the fire chief and verify all of this. I'm not only not exaggerated it, I'm understating it. We all know we can die up there and we've all laid awake worrying about it.

I think that what Susan and her partner are trying to do is worthy and no one in the neighborhood has questioned the worthiness of this project. What we're questioning is its appropriateness to a wildland area with a narrow road, wild life all over the place, the road is not well maintained - oh, Sandra brought up what we do with the road. This year, four people haven't paid dues yet and every year the road grading is done in the fall after the monsoons which wash out big gullies and there are huge gullies this year. We will be plowing it as always in the fall and then the fire mitigation we haven't started yet. We divide up the dues that come in. Half for fire mitigation and half for road work. Our firefighters who always do our fire mitigation and are wonderful have been in California all summer fighting wildland fires there. So they will be back. They prefer doing it in cool weather because the sparks from the chainsaws can set off fires in the summertime. So the cooler the weather and the higher the humidity the safer the fire mitigation is. So the road gets dealt with and so does the fire mitigation. And I think, I think that was all I have. Is there anything else?

HEARING OFFICER: No other questions, thank you.

MS. COLL: Thank you.

HEARING OFFICER: Okay, who else wanted to speak? You, sir, over here and I think there is one other.

[Duly sworn, Richard Bank, testified as follows]

RICHARD BANK: Richard Bank, 6 Owl Creek Road, Santa Fe. Our property, I believe part of our property is adjacent to the property in question if it's not adjacent it's very very close.

I have no problem nor does my wife with the work that the two women are proposing to do but we also think that it is inappropriate for the location that they want to do that work. And so I

don't want to say anything negative about what they want to do but I do sort of want to object to the process that we're going through here in some ways.

We're here because a residential something that was designed to be residential is being transformed or converted to something commercial and it is for that reason that these variances are being requested. There must be probably other variances or exceptions that are going to have to be made when you transform a residential structure to a commercial structure. I'm thinking - I built my own house so I am familiar with this. I should also note for the record that we've lived in our place which we built ourselves with our own hands for 30 years. So we are the second longest tenured residents of La Barbaria Canyon. We've been there a long time. And I'm familiar with all the codes and all of the stuff that I had to do to build my own house. Electrical codes are much more strict for commercial structures. Plumbing codes, waste codes, kitchen codes when you're serving food to people who aren't owners or tenants. So what I would like to see is all of these issues brought together at one time so that the extent, the total extent of the exceptions being made if they are to be made are known.

HEARING OFFICER: Sir, I don't believe there are any other variances or exceptions that County staff has identified other than these road and driveway variances.

MR. BANKS: Well, there has already been mention of the fire stuff and you're assuming that has been -

HEARING OFFICER: That's part of the variances for the roads and driveway.

MR. BANKS: Okay, well, okay, that part of my stuff, I guess, can go away. I would like to address the issue of fire as well. When you have full time residents as either owners or tenants they are typically familiar with where they are living and know the dangers and have - and that knowledge becomes second nature to behavior. Ken Rowley said what we should all do who are opposed to this development is go sit on a log and thing. Well, what flashed through my head that someone staying on this, in this treatment facility or retreat facility is going to do that. They're going to walk out into the forest which is adjacent to this property and they're going to sit on a log and they're going to take out a cigarette and we're all going to die. And this person is from Vermont and if they're from Vermont and they go out in the forest and they spoke a cigarette and they throw it, they don't have to worry about a fire but someone who has only been in Santa Fe for let's say a week who is staying at a facility and goes out and smokes a cigarette or a group of them go out and decide to sing around the campfire, we are all in trouble. So, so, our concern is not with traffic, not with the numbers of people but with the kind of people, people who will not know the area that they're in. And, and, I don't know what you can do about that. You can try and educate people when they come but habits are hard to break and if someone is a smoker, they are going to smoke. And if you smoke in that neighborhood in the summer time you're endangering everybody in the canyon and beyond.

The other thing that disturbed me about the testimony of the representative for the applicants was that she said a couple of things that are just not true. One, she said that the grades on La Barbaria Trail are gentle. The lawyer who spoke against the proposal said that's not true. But I can confirm that because I rolled my truck on the big hill on La Barbaria Trail in the winter; an icy road, my truck stalled, it took off like a sled and I had a choice of going over the edge or up the hillside and the truck rolled. The next guy down hit me. So I know that that's a steep grade. If you try and ride a mountain bike up that road it flips over. It is very very steep. We call it the big hill and we call it the big hill for a reason. So there's that.

The second thing she said that was simply not true was that Susan and Sherry have reached out to all the neighbors. They haven't reached out to us. All of our information came from

conversations with I had with Jay Shelton who is another of our neighbors. But we've been there, as I said, for 30 years and they didn't reach out to us but she said they reached out to everyone of the neighbors.

I think that is probably all I need to say. Everything else that I wanted to say has been said. Thank you.

HEARING OFFICER: Thank you. I think there was one more speaker here.

[Duly sworn, Dennis Lopez, testified as follows]

DENNIS LOPEZ: Dennis Lopez, 26 Camino Tortuga. I'm not much of a speaker and pretty much everything I had to say has been said. But I know they're not hitting any water issues or anything else. That hill he was talking about, every year I see two people in the ditch. You can drive by and look at the cable box it's always laying down. Somebody is always hitting that and that doesn't even have to have snow or ice, just wet you can start sliding down that thing and not make that turn.

The property has been in family originally for about 80 years. I have one lot out of it at 11.5 acres. I live next to the Rowleys and I built between the Rowleys and the Tuckman property which is now Susan's property. I'm not quite sure how them managed to get two casitas in the house there because I haven't been able to build a guest house there – the water restrictions up there. How they got those variances, I don't know. But all I know if you put 10 or 12 people in that place pretty soon the well is going to run dry. I only have 3 gallons per minute well and I know the Rowleys don't have much more than that. I just don't know how they did it and I'm very disappointed in some of these things and I hate to see this go through.

HEARING OFFICER: Thank you. All right, I believe the applicant wanted some rebuttal and I would ask you to address the notice issue that was raised.

MS. JENKINS: Yes, thank you, Hearing Officer Long. A couple of quick things; the big hill that was referenced I was unfamiliar with that particular part of La Barbaria Trails and I've learned that that is beyond where Camino Tortuga forks and heads to the subject property so there would be nobody who would be a guest of the ranch would go that far down La Barbaria Trail. So up to the point where the road forks La Barbaria Trail, the grade of the road does comply with County requirements.

As part of the initial outreach to the neighborhood Susan and Sherry did an email to explain what their intentions were, invite people to visit with them at the property and asked for opportunities to visit with everybody personally and the Banks were on that distribution list so it is possible something got lost in the email. But everybody in the neighborhood was on that distribution list.

Lastly, with respect to water use, the previous owner, Tuckman, who was referenced did a geohydrology study. There are two wells on the property. One at the main house and one well that serves the casitas and the geohydrology study was done and there's a water restrictive covenant for one acre-foot of annual water use per year. We have developed a water budget and there is a water restriction covenant in place executed by the County for one acre-foot per-year, that has all been approved by the County Hydrologist.

HEARING OFFICER: That's for the entire property?

MS. JENKINS: The entire property. So there is more than enough and like I said that has been supported by a geohydrology report.

With respect to the notice, you know we do not – the property does not border La Barbaria Road. We are provided one sign from the County and the sign was put on the property and so that's what I can speak to. We will get with the County as far as prior to going to Planning

Commission to see if they want us to put up an additional sign. They provided us one and so if we need to put up an additional sign we will absolutely do that prior to the Planning Commission hearing.

HEARING OFFICER: Great.

MS. JENKINS: Thank you very much for your time. That's all I have.

HEARING OFFICER: Thank you. All right, one more.

[Duly sworn, Gary Friedman, testified as follows]

GARY FRIEDMAN: Gary Friedman, I'm sworn in but I'm counsel for the applicant. I wanted to address the issue of the association governing documents. My clients never received a copy of any governing document for La Barbaria Trail Association. Just a question, has the County been presented with a copy of any documents, governing documents for the La Barbaria Trail Association? Are they in the packet articles of incorporation or bylaws?

HEARING OFFICER: I think it was just the letter and the issue of their existence or organization and so on was not an issue until the hearing.

MR. FRIEDMAN: I take umbrage with someone representing that there is a governing body that has been properly formed under the laws of the State of New Mexico. I checked the State records online and I found nothing to show that that association has ever been incorporated and didn't find anything myself. And in any event, the only document that I have is a road maintenance agreement that is only signed by nine lot owners at that time and I know a number of people who apparently own property in that area, Mr. Banks and Mr. Shelton, they are not signatures to that document.

So I think we just have to be real careful in the message that is being given that the association has taken a position versus a few neighbors in the area.

HEARING OFFICER: So the road maintenance agreement was part of your clients closing documents?

MR. FRIEDMAN: No, actually it was not. It's not – I handled the closing. It's not in the title policy, not in the title binder and it was never even part of it. We got it later after they moved in but it merely talks about people contributing to the road. It doesn't talk about the formation – I think it's in the packet. It doesn't even talk about the formation of the association or the governing rules and regulations of the association. They don't formally exist as far as I know.

HEARING OFFICER: Well, maybe that is something that can be run down prior to the Planning Commission meeting.

MR. FRIEDMAN: Absolutely, right. I wanted to also address the point that one of the gentlemen speaking in opposition was talking about his concern about smoking. There's not going to be any smoking on this property. And also the issue about the public interest; I think there was mention made by Mr. Graeser about concerns about fire and that being the public interest criteria that can go against granting the variance. I think just the opposite. Allowing my clients to use the property as they desire is going to improve the prevention of fire risks in the future and Ms. Jenkins has talked about that in detail with the fire suppression system. So I think the public interest is certainly going to be served by the use of the property benefitting the society as a whole and the City of Santa Fe. And the danger of fire is going to be diminished.

Mr. Graeser also pointed out, we're not in a court of law, Your Honor, but Mr. Graeser in his letter talked about the Downtown Neighborhood Association Case and I just wanted to cite another reference to that case which is in paragraph 27 that says, The exact showing necessary to prove unnecessary hardship varies from case to case. And this case was the Albuquerque City Council that was involved, the Court said the City Council must make the initial determination by

considering all the relevant circumstances. Essentially, whether or not other reasonable use of the property can be accomplished is only one factor that goes before the governing body when they make a decision on whether or not to grant the variance. It's not the only factor and as we know there is various criteria in the code that is talked about.

And, I'd also like for the record to indicate another case that I know you're very well familiar with which is the case of *Pauley versus Santa Fe County Board of County Commissioners*, 138 New Mexico 82. That was a Supreme Court case. And the reason I bring that up is because like the applicant in that case, Ms. Long, Hearts Way Ranch is looking at a permitted use. In that case it was a permitted use, a telecommunication tower, and here we're looking at a use that the County has specifically said is appropriate for that area. And, also like the variance in the Pauley case, in this case the variance seeks to use the land as allowed under the zoning regulations. So in the Pauley case the Commissioners found that the denial of the variance would result in inhibiting achievement of the purpose of the code and I think that's exactly the case here. The purpose of the code is to foster economic vitality of local businesses and professionals and that's in section 1.4.2.11 and in addition, Ms. Jenkins talked about a couple of other sections of the code that relate to fostering economic vitality. So I think it is clear here, the same way in the Pauley case, is that we want to achieve the purpose of the code and the variance does not go against that.

Thank you.

HEARING OFFICER: Okay, thank you. All right, that will close the public hearing – yes.

MS. LUCERO: Hearing Officer Long, we have Victoria DeVargas here from the County Fire Prevention Division and she would like to address the letters from the Hondo Fire District.

HEARING OFFICER: All right. That seems appropriate.

VICTORIA DEVARGAS: Hearing Officer Long, I just wanted it recorded or documented that those letters this is the first time that the Fire Marshall's office has seen those. They are a representation of the district fire chief from Hondo fire district. They do not represent code. The definition of extreme fire danger that is given in that letter is in reference to the Forest Service and their daily description of daily hazards as far as winds, weather, temperatures, humidity and so forth. The extreme fire danger that this property falls under is referenced in the Wildland Urban Interface Code. I apologize I tried to find the definition for the category extreme but I was unable to find that during this hearing. So we can follow-up with that if need be.

But as far as Fire Code goes, all of those letter were addressed by inspector Tim Gilmore the requirements in reference to slope and any additional requirements such as sprinklers or water storage and the applicant has agreed to those requirements.

HEARING OFFICER: Okay, thank you for that clarification, it was a little confusing.

All right with that then our public hearing is closed. As you've heard reference to, I just make recommendations and my recommendation will go on to the Planning Commission and that will also involve another public hearing that you are able to speak at and present your views. My recommendation has to be done within 15 days. I expect that to be done sooner since I am going out of town and I want to get it done before I go out of town. I will attempt to get it done as quickly as I can. I don't usually announce my decisions. I've got to go through my notes and I'll reduce that to writing and then staff, of course, will make that available to you when it's finalized.

All right, and we have no further business.

IV. Adjournment

With no further business, Hearing Officer Long adjourned the meeting at 5 p.m.

Approved by:

Nancy Long, SLDC Hearing Officer
Santa Fe County

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

August 18, 2016

- I.** This meeting of the Santa Fe County Planning Commission was called to order at 4:00 p.m. by Vice Chair Susan Martin at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.
- II.** Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Commissioners Present:

Susan Martin, Vice Chair
Rena Gray
Bette Booth
Louie Gonzales
Leroy Lopez

Commissioner(s) Excused:

Frank Katz, Chair
Phil Anaya

Staff Present:

Vicki Lucero, Building & Services Manager
Tony Flores, Deputy County Manager
Penny Ellis-Green, Growth Management Director
Mathew Martinez, Development Review Specialist
John Lovato, Development Review Case Manager
Andrea Salazar, Assistant County Attorney
Dave Sperling, Fire Chief

IV. APPROVAL OF AGENDA

Commissioner Booth moved to approve the agenda as published. Commissioner Lopez seconded and the motion carried by unanimous voice vote.



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V. APPROVAL OF MINUTES: August 18, 2016

Commissioner Booth moved to approve the August minutes as submitted. Commissioner Lopez seconded and the motion passed by unanimous voice vote.

VI. NEW BUSINESS

- A. CASE # V 16-5150 Hearts Way Ranch Variance: Heart's Way Ranch, Susan Carter, Applicant, JenkinsGavin, Design & Development Inc., Agents, request three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of two casitas, a yoga area, and a main residence on 39.5 acres. The Applicant requests a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent, a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10 percent in three separate locations in order to get to the casitas and main residence, and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East, Commission District 4, SDA-3

[Exhibit 1: Santa Fe County Fire Department Memo, 9/7/16; Exhibit 2: Photos of the road provided by Applicant; Exhibit 3: Petitions provided by Applicant; Exhibit 4: Site map, photos demonstrating pullouts and road width; Exhibit 5: Graeser & McQueen support material]

CHAIR MARTIN: I would just like to introduce myself. I am Susan Martin, the vice chair of the commission. Our chair is not here so please be patient with me. I know that we all feel strongly about some of the issues in this and I am just asking us to be respectful of each other and I am also asking that people who speak not be redundant or duplicative.

If we could have the staff report.

JOHN LOVATO (Case Manager): Thank you, Madam Chair. Heart's Way Ranch, Susan Carter, Applicant, JenkinsGavin, Design & Development Inc., Agents, request three variances of the Sustainable Land Development Code to allow a retreat facility consisting of two casitas, a yoga area, and a main residence on 39.5 acres.

The Applicant requests a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent, a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10 percent in three separate locations in order to get to the casitas and main residence, and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements.

The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East, Commission District 4, SDA-3

On August 25, 2016, the application was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the Finding of Facts and Conclusions of Law written order, Exhibit 12. At the August 25, 2016 Hearing Officer's meeting seven members of the public spoke in favor of the application and four spoke in opposition. The major concern of opposition was due to the road issues and congestion associated with La Barbaria Trail.

Currently, there is a 3,651 square foot residence, two casitas 1,100 square feet each, a 1,000 square foot garage located at the main residence, a 750 square foot workshop, and a 400 square foot carport. All structures have been permitted through Santa Fe County. One of the casitas was permitted as a studio and later converted into the casita without a permit. The site contains two wells and a septic system that supports the two units.

The property is a 39.57 acre tract within the Rural Fringe Zoning area as defined by Ordinance 2015-11, Sustainable Land Development Code, Chapter 8, Section 8.6.3. Appendix B of the SLDC designates a retreat as a permitted use within the Rural Fringe Zoning District. The Applicants' agent submitted an Application for a Site Development Plan, to request a retreat. It was discovered after submittal that the approach to the intersection exceeds grade requirements of 5 percent for 100 linear feet, and the grade of the driveway is 17 to 21 percent in three locations. Permits were obtained in 1994, for a driveway with grades up to 14 percent. The approval was granted in accordance with the Extraterritorial Zoning Ordinance which allowed for grades of 15 percent; however, the driveway was not constructed to the approved plans. Therefore, variances are being requested.

Building and Development Services staff has reviewed the Site Development Plan for compliance with pertinent SLDC requirements. The driveway grade of 5 percent for 100 linear feet upon an intersection and the overall driveway grade to get to the casitas and main residence exceeds the required grade of 10 percent, and offsite roads do not meet the 20 feet driving surface. La Barbaria trail is a base course surface with a minimum width of 9 feet and a maximum width of 18 feet. The driveway that accesses the site is 14 feet in width with a base course surface and has pullout locations. Improvements were done for fire protection to include pullouts, and two 10,000 gallon water storage tanks with a draft hydrant that was placed at the main residence.

The Applicant addressed the variance criteria as follows:

1. Where the request is not contrary to the public interest.
The variance is requested for an existing private driveway and this is not contrary to the public interest. The driveway will be used primarily by the property owners for access to the single family residence at the top of the driveway. There will be four to six retreat guests that access the two casitas and provide overnight accommodations. In the past, full time tenants have rented the guest homes. Additionally, installing an automatic fire suppression system in the casitas and workshop will be in the public interest. The property owner implemented driveway improvements and the driveway is well constructed and in the context of the steep terrain which minimizes slope disturbance.
2. Where owing to special conditions, a literal enforcement of the SLDC would result in unnecessary hardship to the Applicant.

Special conditions exist that the subject lot comprised of steep terrain and reconstruction of the driveway would cause scarring of the hillside. The previous owner worked in collaboration with the County Fire Marshal in effort to conform to safety standards. Reconstruction of the driveway to the SLDC standards would result in unnecessary hardship to the Applicant.

3. So that the Spirit of the SLDC is observed and substantial justice is done. Maintaining the existing driveway is consistent with the SLDC as stated in Section 1.4.2.20 "Ensure that building projects are planned, designed, constructed and managed to minimize adverse environmental impacts. The driveway was constructed to minimize adverse environmental impacts, while satisfying the requirements with emergency access and life safety.

Staff Response: Although tenants have moved in and out of the casitas, this area is in an Extreme Wildland Fire Hazard Area. During inclement weather, and on slopes in excess of 10 percent, emergency access may not be possible due to the severity of the steep slopes. The structures will be utilized as a retreat center, and the use may increase tenants which can increase traffic use. Chapter 14, Section 14.9.7.4, Variance Review criteria states, Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant. The road was not constructed per approved plan, but road design standards have changed since that time, and the Applicant is now requesting to change the use from residential to non-residential. Staff acknowledges that it would be difficult to widen the road width, reduce the road grade or widen these area without disturbing large amounts of 30 percent slope, and causing visual scarring.

The Applicant addressed the variance criteria as follows:

1. Where the request is not contrary to the public interest.

The request is not contrary to the public interest. La Barbaria Trail is an existing local roadway which has been serving the vicinity for several decades. As stated in the variance criteria answers above, Hearts Way Ranch will be used by the property owners and their guests to access the existing residence and casitas.

2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant:

The Local Road classification calls for two 10-foot wide driving lanes. As stated above, La Barbaria Trail lies within a 20-foot easement. The width of the easement, as well as the area's exceptional steep terrain, render it impossible to widen the road. A literal enforcement of the SLDC would result in unnecessary hardship to the applicant by essentially rendering access to Hearts Way Ranch an impossibility.

3. So that the spirit of the SLDC is observed and substantial justice is done.

This Variance request is intended to allow for a locally owned business with requisite zoning to move forward and commence operations. As stated above, Hearts Way Ranch is proposed sober-living wellness retreat center, which is permissible use in the Rural Fringe Zoning District. The request therefore observes the spirit of the SLDC as stated in Section 1.4.2.11: Accommodate within appropriate zoning districts, regulations for protection and expansion of local small businesses, professions, culture, arts and crafts including live/work, home occupations and appropriate accessory uses in order to support a balanced, vigorous local economy.

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Staff Response: Although the proposed use is permitted in this zoning district, all requirements of the Sustainable Land Development Code shall be met. La Barbaria Trail is a private road that does not meet the road standards of the SLDC. La Barbaria Trail is required to have a minimum of a 20-foot driving surface with two lanes that are 10-foot each, a 50 right-of-way, and adequate drainage. Many locations of La Barbaria Trail are 9 feet in width at minimum and 18 feet in width at maximum. There are limited areas that may allow for road width to be increased due to adjacent drainage and steep slopes in excess of 30 percent. The grade on this offsite road meets Code requirements and the road is in good condition.

Recommendation: On August 25, 2016, the Application for a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent; a variance of Table 7-13 to allow the grade of the driveway to exceed 10 percent; and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements was presented to the Santa Fe County Hearing Officer. The Hearing Officer supported the Application as memorialized in the findings of fact and conclusions of law written order.

If the decision of the Planning Commission is to approve the Application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation as Exhibit 13.

Thank you, Madam Chair, and I will stand for questions.

CHAIR MARTIN: Thank you, staff. Does any Commissioners of the committee have any questions for staff? Commissioner Booth.

COMMISSIONER BOOTH: Although this hasn't been brought up yet but in reading through the public hearing notes I notice that we talk about a TIA that is required for the associated development permit – what is the status of the TIA?

VICKI LUCERO (Building & Development Services Manager): Madam Chair, Commissioner Booth, the TIA is under review. They have submitted a separate application for the – the Applicant has submitted a separate application for the site development plan which is pending based on the decision of the variance so that is currently under review.

CHAIR MARTIN: Are there other question from the Commission? If not, actually I have a question. At the end it says as required by the SLDC, the Applicant's agent presented the application to the Technical Advisory Committee on May 19, 2016, is there any written record of that or is there a result of that?

MR. LOVATO: Madam Chair, there is written record of that. A memo was sent to the Applicants addressed their concerns and what was discussed at the TAC meeting.

CHAIR MARTIN: Okay, thank you. Okay. No other questions from the Commission at this point?

Okay, this is a public hearing and are there people who would like to comment on this application? Oh, I am sorry. The applicant, of course.

JENNIFER JENKINS: Good evening, Madam Chair, Commissioners, my name is Jennifer Jenkins. I am with JenkinsGavin here in Santa Fe and here representing Susan Carter and Shari Scott for the variance requests that are before you this evening or this afternoon actually. It is still this afternoon.

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I have a couple of quick introductions and I have a brief presentation and then we would be happy to stand for questions.

[Duly sworn, Jennifer Jenkins provided the following testimony]

MS. JENKINS: So with me here to my right I have Susan Carter and Shari Scott who are the applicants and the owner of the Hearts Way Ranch property. And behind me is Gary Friedman our legal counsel.

I am going to go ahead and approach with some visual aids and just kind of walk you through the property and what the request – the nature of the request that are before you this evening. Okay, if I may approach?

So just so we can all kind of get our bearings of where we are here: this is La Barbaria Road which you get directly off of Santa Fe Trail. That is County Road 67F, so that is a public County roadway. And then at this point you get La Barbaria Trail. La Barbaria Trail is a private road that is within a 20-foot access easement that was established back in the very early 1980s. So La Barbaria Trail – the subdivisions and the lots and the homes that you see that are constructed here were constructed permissibly by Santa Fe County with La Barbaria Trail as the only means of access. And as you come in on La Barbaria Trail at this point there is a fork in the road and this is the southwest corner of the subject property. So the subject property is here – it's a little hard to see, it's outlined in green but there are so many trees it is a little hard to tell. So here is the 39 acre subject property. This is zoned rural fringe as John stated and has a minimum lot size of 20 acres. So we are almost double the minimum lot size for the zoning district.

So at the southwest corner of the property La Barbaria Trail continues into here and then this Camino Tortuga which continues up into here and dead ends right here. This is where the driveway serving the property starts which is Sendero de Corazon. And Sendero de Corazon winds up – these are the two existing casitas. They are each about 1,100 square feet on the lower part of the property. This is an existing little garage workshop building and then the main 3,600 square foot residence is here at the top of the driveway.

So there are three variance requests here before you today and just to reiterate as was mentioned, we have submitted a site development plan application to Land Use for retreat and this is a small, intimate, wellness retreat for women who have completed any sort of addiction recovery and this is a place where they can come to transition into their new life. Each of these casitas are two bedrooms and could accommodate four to six women at any given time. And, as mentioned, also, retreats are permissible use in the rural fringe zone and we are not proposing any new construction with this application. Everything – we are using only the existing structures on the property and no new construction is proposed. But we do have existing circumstances relative to the access that with the adoption of and the implementation of the SLDC last January warrants the variance requests that are before you.

One variance request relates to the offsite existing access of La Barbaria Trail and requires a 50 foot right-of-way and we only have a 20 foot access easement that has been existing for over 30 years in that instance. And, then at this point here, at this intersection there's a variance for the grade at the intersection of Camino Tortuga and La Barbaria Trail. And then we have the grade of the driveway itself that serves as access to the casitas as well the main residence. And the driveway under the Extraterritorial Zoning Ordinance the maximum permissible grade when the driveway was permitted in 1994

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was 15 percent. There are a couple of spots that exceed that. There is one little steep spot for a short distance of about 21 percent and then there are some spots at 17. And we have worked – our client, my client, acquired the property in January and the previous owner invested hundreds of thousands of dollars in improvements to the property to make it as safe as possible in consideration of the mountainous area that the property is in – the remoteness and the mountainous nature of it. And, Mr. Loftin worked, the previous owner worked directly with the County Fire Marshal's Department to say, What can be done here to make this as safe as possible given the constraints of the existing terrain?

This is oriented – actually we are oriented the same way, so – let me move this out of the way – so, again, this is that little intersection at the southwest corner where La Barbaria Trail continues here, this is Camino Tortuga that just crosses the property and then here is the driveway here. So several things were done by the previous owner. The driveway itself was resurfaced, regarded, guardrails where necessary were added, but the key, the really key improvement are these pullout areas that you see identified here. The driveway is compliant in its width. It is a 14 foot wide driveway which is a compliant width but when you have a driveway of this length what the Fire Department asks for is opportunities for vehicles to pass one another. So if an emergency is entering the property and there's a vehicle attempting to exit the property that there are plenty of options for vehicles to safely pass. So that is what has occurred here, here and here and these pullouts do meet the dimensional standards for fire access for passing areas.

Secondly, up here at the main house we have 20,000 gallons of water storage on the property that is connected to a draft hydrant as well as fire hoses on the property. So I would venture to say that this is probably one of the safest properties in the area already in terms of its access and additional fire protection measures. But collaboration with the Fire Department there are additional measures that we are taking to ensure life safety and those measures include this: the two casitas which is where the guests will reside when there are guests on the property will be retrofitted with automatic fire suppression systems. Interior residential sprinkler systems. In addition to that the owners reside in this house and this is where they will continue to reside so this is a residence how and it will continue just to be a residence and we are also going to be installing retrofitting automatic fire suppression in the main residence. So from a life safety standpoint, it really doesn't get much better than this especially given the mountainous nature of the property. In addition to that, we will be doing a vegetation management plan. Some of that work was already done by the previous owner to ensure that there was a clearing of vegetation adjacent to the structures to minimize if there is any fire it does not affect the structures themselves. So we will be revisiting that vegetation management in collaboration with the Fire Department to ensure that we are taking the necessary steps to ensure a situation that is as safe as it can possible be.

And, the variance for the driveway is before you because considering this environment to make this fully compliant at a 10 percent grade would be an unbelievable scar on the mountainside and retaining walls and it would be an environmental disaster. And I would be before you asking for variances to disturb 30 percent slopes to make the driveway compliant. So no matter which way you slice it – so we feel really strongly that this is the appropriate path forward. The driveway is in excellent condition given the mountainous terrain it is probably as good as it can get and engineered incredibly well. And we have pullouts and we are going to have sprinklers in each of these dwellings.

Just so you can get a sense of the existing access I'm going to pass out some photos that I think will give you a good sense of the conditions of the property. The numbers on the coversheet for the onsite driveways indicate where the photo was actually taken so you can see with number one that's the intersection at Camino Tortuga and La Barbaria Trail. This is where Sendero Corazon starts, this is where it divides to go to each of the casitas and then we capture the pullout areas as well as the turnaround area that is at the top of the driveway.

And I believe that you have been provided an updated memo from the Fire Department. The Fire Department is recommending approval of this application in consideration of the condition of the driveway and the additional safety measures that are going to be employed via the automatic fire suppression on the property.

As I mentioned previously, this is a small intimate wellness retreat for four to six women who the casitas will serve as their guest accommodations. Women who have completed their recovery and this is really a next step so they can start their new lives in a new way. One very, very important detail, the guests will not be bringing their own vehicles to the property. They will be driven by the property owners to town when necessary as the property owners go to town when necessary. The casitas were historically rented full-time by the previous owner as well as owners preceding him. The property was developed in the mid 1990s. So those casitas were historically rented full-time so we are going from essentially three dwelling with the vehicles and the trips to jobs and the grocery store and everything else that comes with that and we are with this application we are transitioning to one dwelling where the residents work on the property and two guest accommodation structures that do not accommodate vehicles. So typically when we're talking about a request for a change of use we often hear the terms an intensification of use. And I understand that in some instances that is accurate. It just doesn't happen to be accurate in this situation. This application and these variances are actually going to result in a lowering of the intensification and use of this property. A reduction of the intensification of the use of this property.

And, also, in your staff report you have a memo from the planning division the Santa Fe County Planning Division also recommending approval because of the negligible traffic. It's in your staff report I don't know the exact exhibit but we could probably pull that out. And with this application and the installation of the additional fire suppression measures, the property is going to be made more safe than it is today.

And then we have the intent of the code about supporting small businesses especially ones of such negligible impact. There is a reason retreats are permissible here because by the sheer nature of them, it's a quasi-residential use. People are sleeping and eating there.

Some of these you have in your packet but we also have received additional letters of support since the Hearing Officer's meeting and I am going to go ahead and pass these out. And I have petitions totaling 31 signatures and I have 20 letters of support and again there about three letters here that are not in your staff report.

I greatly appreciate your attention and with that I would be happy to stand for any questions and I would respectfully reserve the right for rebuttal prior to the close of the public hearing. Thank you very much. Oh, yes, of course, thank you. This is the same thing I forgot last time.

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So back to this image – you might be wondering what the silver notes mean. So, again, this is the subject property and these in the yellow line show the adjacent parcels. We have letters of support from the properties identified with the silver notes, our most adjacent neighbors. Susan and Shari made a concerted effort to reach out to every single one of their neighbors. They have been utterly transparent about what their plans are. What their program is. What the requests are that are before you. So we are thrilled to be working in collaboration with our most adjacent neighbors and to have their support.

Thank you very much.

COMMISSIONER GONZALES: Ms. Jenkins, I've got a few questions. Regarding the water issues, if you look at that map that you supplied us where the two little casitas are – I guess the casitas have their own separate well for those two little casitas; is that correct?

MS. JENKINS: That is correct. There's a well at the casitas and there's a well up at the main house.

COMMISSIONER GONZALES: And then the home has its own well – the main home has its own well as well?

MS. JENKINS: That is correct.

COMMISSIONER GONZALES: And does the State Engineer or does the use of the water for those two wells is it sufficient for the casitas and the main residence?

MS. JENKINS: Absolutely. A geohydrological study was done in accordance with County code by a previous owner and that was submitted to Santa Fe County for review and there is a water restrictive covenant based upon the results of that geo hydro and this property is limited to 1 acre-foot annually and that is .5 acre-foot dedicated to the main residence and .5 acre-foot dedicated to the casitas and it is more than adequate for the proposed use.

COMMISSIONER GONZALES: Thank you. Regarding the existing roads there that one and I guess it is Camino Tortuga, who maintains that road?

MS. JENKINS: There is a road maintenance agreement that was executed in 1990 for La Barbaria Trail. And that road maintenance agreement does not specifically include Camino Tortuga and it is my understanding and my client can maybe speak to this but there is essentially a collaborative effort on the roadway and driveway maintenance for the roads that do not include, you know, outside of La Barbaria Trail because there is a formal road maintenance agreement in place for La Barbaria Trail and there is collaboration and financial contribution for when it is necessary to maintain Tortuga.

COMMISSIONER GONZALES: So all of the private residents in there maintain the road. The County doesn't maintain them.

MS. JENKINS: No, there is no County maintenance. The County maintenance stops and I can show you. [Within the microphone and identifying the area on a map]

COMMISSIONER GONZALES: Historically, has that road serviced all the people that live in that area and it hasn't widened?

MS. JENKINS: That is correct.

COMMISSIONER GONZALES: I just don't like the fact of widening roads if we don't need to widen roads. It just destroys the nature of this whole character of where we live. And so anyway, that's all. Thank you, Chair.

CHAIR MARTIN: Commissioner Booth.

COMMISSIONER BOOTH: Yeah, so and I'm not sure you're the right person to ask about this. So there's a memorandum of agreement that a new homeowner buys into; is your client then a member of that association?

GARY FRIEDMAN (Counsel to the Applicants): There's no agreement.

MS. JENKINS: Okay, so we do have information on the original road maintenance agreement but Mr. Friedman is more well versed in that so I'm going to let him answer that. I can have him come up real quick and address that.

MR. FRIEDMAN: Good afternoon. So there is a road maintenance agreement that was signed back in 1990. There's about 12 lots in that area that signed that road maintenance agreement but there's no -- there's never been any formal La Barbaria Trail Association ever set up with respect to that area. And Mr. Graeser I think was under the misimpression when he was appearing before Nancy Long, the Hearing Officer, that there was an incorporated association. He has since sent a letter to staff correcting his misunderstanding of that.

There is no formal association. It is very informal. In fact, in looking at the chain of title of people who signed that road maintenance agreement and chain of title of people who are quote and quote members of this loose association, only half of the people who are part of that association today are successors in interest of people who signed that road maintenance agreement. So that's how it works. And people basically voluntarily agree to join the association like my clients have and contribute financially to the upkeep of the road. Thank you.

CHAIR MARTIN: Thank you. Commissioner Gonzales.

COMMISSIONER GONZALES: Was that road maintenance agreement that you speak of, was in place prior to your clients buying the property?

MR. FRIEDMAN: No, actually, Commissioner Gonzales, the road maintenance agreement didn't turn up in the title commitment and the reason is because the folks who owned my clients prior previously never signed that road maintenance agreement. Their signature is not on that. And, like I said, there is eight other lot owners who are members of this loose-knit association who were never signatures to that road maintenance agreement either. It doesn't legally affect my clients. It's not an exception to their title but they voluntarily agreed to help out in the maintenance.

COMMISSIONER GONZALES: So with respect to that -- did the maintenance agreement prior to it being signed by the people who have signed it everybody who has done it has done is on a voluntary basis up to that point?

MR. FRIEDMAN: Right, correct. Thank you.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER GREY: Wait, I have a question.

MR. FRIEDMAN: Yes.

COMMISSIONER GRAY: Just to clarify, your clients are contributing now to the maintenance of that road now?

MR. FRIEDMAN: [speaking to his clients] You're not right now?

COMMISSIONER GRAY: Why not?

MR. FRIEDMAN: The reason for that, Commissioner, is that it is our understanding that the dues that were going towards that association that were supposed to be used for road maintenance have been used for other purposes with respect to cutting

down trees and also, and also, as a pool for funding attacking my clients' application before the County. So obviously they are not going to contribute to a fund that some of the people in there have decided that they are going to use the funds. And there was never any formal meeting of the association. I think and I don't want to speak for some of the people opposed but the testimony last time from Ms. Coll was that she telephoned polled some of the folks in there and got their approval to use the funds in there. I suspect that that's not really proper and certainly my clients wouldn't agree with having their funds used in an action against them so that is why they haven't contributed.

COMMISSIONER GRAY: Have they or has any attempt been made to reach some sort of proposal or agreement toward the road maintenance alone aside from

MR. FRIEDMAN: I don't know what you mean by some sort of proposal?

COMMISSIONER GRAY: Well, they're using the road and they're not paying for it -

MR. FRIEDMAN: Right, but they have the right to use that road.

COMMISSIONER GRAY: But clearly the previous owners or the association are claiming that it costs money to maintain that road that they use and they have a legitimate road to say, We're paying for you to use this road.

MR. FRIEDMAN: Sure, and I think once this gets cleared up my clients are more than happy to put money into this loose-knit association.

COMMISSIONER GRAY: Well, that's my question. I know they're happy to do that. What is it that they're proposing in terms of coming to that arrangement?

MR. FRIEDMAN: We haven't been approached with respect to that.

COMMISSIONER GRAY: Okay.

MS. JENKINS: If I may, Chair, Commissioners, I think Ms. Carter can speak to this a little more carefully. It is absolutely a valid question and there has always been intent to participate with their neighborhood in terms of maintaining the roadways that they all share. Ms. Carter actually to complete our presentation does have a few brief comments and she would like to speak to this particular issue directly. I think hearing from the horse's mouth I think would be in everybody's best interest.

CHAIR MARTIN: Wait just a second. I have a clarification question. You speak about Sendero de Corazon as both a driveway and a road; is it -

MS. JENKINS: It's a driveway. It's a driveway. La Barbaria Trail is a road and I would venture to guess that Tortuga qualifies probably more as a driveway and Sendero Corazon is just on her property and only serves her property so that would qualify as a driveway.

CHAIR MARTIN: Okay, thank you. Any other questions from the Commission before okay.

[Duly sworn, Susan Carter testified as follows]

SUSAN CARTER: Good afternoon, Commissioners, it is an honor to be here. Thank you very much. To just address the question at hand; Shari and I are very much in support of supporting road maintenance and we definitely want to pay our share if not - however, it is allocated to us and we have talked to some of the neighbors about how that is actually accessed. We got the agreement in January or February of 2016, the

actual newsletter from the person who chairs the loosely called association and we opted not to contribute yet until we had a clear understanding of how those funds were being spent because it is my understanding that the money that is being collected for that, the chair was actually the one that hired the attorney and I was under the impression that those funds were being used to pay the attorney. And I don't really want to support opposing counsel. So, I am sorry but I am not going to – if I had a clear understanding of how the money was being used I would be happy to support that. So I hope that you understand. But I am in no way not going to support that because I do in fact use that road and intent on being a very active participant in the neighborhood.

But anyway I would like to take a moment in introduce myself and my business partner who is also my very best friend and has been my very best friend for 42 years, Shari Scott, sitting right behind me, Dr. Shari Scott. Shari has spent her entire career delivering health care as a nurse therapist, nurse practitioner in psychiatry while I've spent mine in non-profit management. I've been – I was a founding employee of the Susan G. Komen Breast Cancer Foundation for 20 years. I handled all of their marketing and communications, developed the pink ribbon and the Race for the Cure Series. And just most recently left as the CEO of the Arthritis Foundation. So both of us have pretty much spent our careers really in contributing and ensuring the wellbeing and the health of others.

There is something else that Shari and I have in common and that's we share 56 years of sobriety. Shari has 33 years and I, myself, have 23. Last September when I left the Arthritis Foundation as CEO I decided that I no longer wanted to be in management. I wanted to assist people more directly with my friend Shari, like my friend Shari. And based on the increased rates of death and dying and relapse from treatment of addiction my best friend and I dreamed of being able to work together to help women find what we have been so graciously given which is sobriety and freedom from addiction.

In October through an uncanny series of events, I like to say the property at Sendero de Corazon found us. We didn't find it. It was perfectly suited in every way imaginable for what we envisioned for a small intimate healing environment for executive women. Prior to purchasing this property on November 15th we hired JenkinsGavin to conduct due diligence on our behalf. We learned shortly thereafter that the property was up for rezoning making retreats a permitted use. We also learned the previous owners, as Ms. Jenkins stated, invested close to \$500,000 to make the property safe for he and his wife and that included working with the Deputy Fire Marshal to improve the driveway with pullouts and guardrails and building an elaborate fire fighting system complete with a fire hydrant, two 10,000 gallon water tanks equivalent to 16 fire trucks and fire hoses throughout the property. Then in December we learned the rural fringe property had been zoned appropriately for our use and we excitedly submitted a contract in January.

Hearts Way Ranch will be a wellness retreat for four to six women who have completed detox and treatment. It's one thing to just quit drinking and drugging, it is an entirely different thing to discover why you're not comfortable in your own skin. This is for women to find their heart and come home to themselves in a way they've never known they could. Why here? Santa Fe is in an ideal setting for integrated healing holistic health care. The environment is beautiful healing and safe and the recovery community is robust and embracing here. The program is based on the four spiritual

principles of the Zia Sun symbol: a strong body, a clear mind, a pure spirit and dedication to the well being of others by doing service work in the community.

The women will not have vehicles and will be traveling to and from town with us as we do. This endeavor will have much less of an impact on the roads than current permitted use of short- or long-term leasing of the casitas. We'll be installing sprinkler systems as you heard in the casitas and in the main house and we'll reduce the risk associated with any open flames and/or safety risk as we will have control over the guests who visit our property unlike that we have over those that rent from us. And we will benefit the Santa Fe community philanthropically and economically as a small business and a socially responsible corporate entity.

Commissioners, we hope that you will not let these variances stand in the way of the healing work we hope to do on this amazing property in La Barbaria Canyon. Thank you for your attention and your consideration of our request. Thank you.

CHAIR MARTIN: Thank you.

COMMISSIONER GONZALES: Chair, I would like to add a question.

CHAIR MARTIN: Commissioner Gonzales.

MS. CARTER: Sure.

COMMISSIONER GONZALES: Is your intent at all to improve this property in any way and make it bigger and have more than six women being treated at any one time?

MS. CARTER: Not right now, sir.

COMMISSIONER GONZALES: Thank you.

CHAIR MARTIN: Any other questions from the Commission? Thank you very much.

MS. CARTER: Thank you.

CHAIR MARTIN: Now this is the time for the public hearing. Would those that plan to speak please raise your hand so you can be sworn in at the same time.

[Those wishing to speak stood and were administered the oath.]

CHAIR MARTIN: Thank you very much and again I recognize that this is a free speech issue and we do want to hear from all of you who want to talk to us but I am asking those that follow the first speaker not to be duplicative or redundant. Thank you.

[Duly sworn, Paul Schweizer, testified as follows]

PAUL SCHWEIZER: Certainly. I am Paul Schweizer. I reside at 118 East Sunrise Drive, Santa Fe, 87506. I am here today to speak on behalf of the applicant and request that the variances requested by Hearts Way Ranch be approved as led by Susan Carter and Dr. Shari Scott.

Driving the brief roads from Old Santa Fe Trail to 34 Sendero de Corazon – loosely translated it is path to of our hearts – along the outskirts of Santa Fe County and into the foothills of the Sangre de Cristos along La Barbaria Trail one encounters few people or vehicles. There is no traffic. And one senses the allure that has drawn people to Santa Fe for centuries for gold, god and glory but since the late 19 Century for personal healing.

As recently as 2010 a writer for the *New York Times* asked, What is Santa Fe? Immediately answering, A place of healing. A spiritual mini-mecca for a semi-godless age. Further affirming that Santa Fe still holds out a promise of renewal of exactly what

DH Lawrence was looking for when he came to this area. A place that changes not only ones external life but ones internal, spiritual life. This is a city where the wounded come for healing and seekers come to find.

Today as a fellow Santa Fean I ask you to continue fulfilling such healing promise. Ms. Carter and Dr. Scott are contemporary standard bearers of such promise. Two people who have devoted their lives to serving others, helping others heal through wide acclaim as top executives for institutions such as Susan G. Komen For the Cure and personal advocacy groups offering therapy for patients desperately seeking to be healed. Ms. Carter and Dr. Scott are extraordinary women of integrity serving others.

Following its history and traditions Santa Fe should welcome Ms. Carter and Dr. Scott with outstretched arms and embracing arms. Some may argue that the road to Hearts Way Ranch is too long, not well maintained, too highly trafficked or otherwise inadequate. But the people seeking healing who are in deep need of this retreat will not have their own vehicles and those who make come and go to serve them will create no more traffic than any other adjacent resident. In fact, as a non-charity serving charitable causes Hearts Way Ranch will support Santa Fe County's tax base. In light of Santa Fe's history the wise people leading Hearts Way Ranch and the lack of impact on the surrounding community I urge you to join me in bringing this worthy endeavor to fruition. Thank you.

CHAIR MARTIN: Thank you, Mr. Schweizer. Yes, please come up.

[Duly sworn, Anne Reese testified as follows]

ANNE REESE: My name is Anne Reese and I live in Santa Fe and have for the last three years. I live at 3005 Monte Sereno in Santa Fe, 87506. I have known Susan Carter for over 40 years both personally and of her fine well regarded reputation in the field of helping others. She is an incredible leader and I know this through her reputation having lived in Dallas most of my life with Komen and with the Arthritis Foundation. And it is my honor to stand up and testify on her behalf. She is bright. She is conscientious, big hearted and very talented at what she does and what she will do.

I also have had the good fortune of knowing Dr. Shari Scott. I also am in the mental health field and worked in that field for many, many years in Dallas. I was a director of a family therapy program with a large private non-profit and through the mental health work in the community I came to know Shari Scott well. She is also highly, highly regarded in Dallas. Has multiple licenses and degrees and the combination of her degrees and background is absolutely exceptional. It was my good fortune to work with her, refer to her and receive referrals from her over the years. Dallas is losing an incredible clinician and Santa Fe and New Mexico are gaining an incredible clinician and devote woman to mental health.

In this position I know both of these women and can vow for their integrity, conscientiousness, and their dedication to community. They pay attention to every detail whether professionally, personally or spiritually. Hearts Way Ranch will not only be a gift to Santa Fe it will be a gift to this country. As a marriage and family therapist and someone who has worked in the field for many years, I often have trouble finding retreat centers post treatment where people can go. This will be an amazing gift to many women and it's an honor, again, to testify on Shari and Susan's behalf. Thank you.

CHAIR MARTIN: Thank you, Ms. Reese. And for the rest of the people who are going to be speaking I would ask you to limit your remarks to the issue of the

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variance, the use of the land. That's within our purview to make a decision about, thank you.

[Duly sworn, Ken Rowley testified as follows]

KEN ROWLEY: I am Dr. Ken Rowley. I'm a neighbor of these people. Commissioners, thank you for the opportunity to speak in regard to the three variances Susan Carter and Dr. Shari Scott are requesting. I live beside the road in question since 1997 and I know it quite well. This road is very well maintained, has been in use for 20 years and there never has been an accident. The proposed future of this road will have less traffic than it has had in the past and the heaviest vehicle traveling it will probably be one of those little brown UPS trucks.

The three areas in the road that are not to code if fixed will certainly require more than a road scrapper, bobcat and a pickup truck. And big equipment will equal big bucks. Just moving these huge machines to the sites that need to be reconstructed could cause considerable damage to what is considered an already very good mountain road and a stable mountainside. And you know, they will be using the largest equipment they can simply for efficiency sake and to get the job done in the least amount of time. Would this be days, weeks or unforeseen complications lasting even longer? Would this road be blocked for traffic and for how long? Or how much construction damage requiring additional repair and you know there are dangers when operating these large machines and especially in mountainous terrain.

I grew up in the mountains of West Virginia and I know how serious these dangers can be. For instance, I remember well when the Dimskyn twins grew up without a daddy. Carl Dimskyn operated these big machines until he was killed when one rolled over on him. It's an excellent mountain road. Three grades that have been successfully driven over for 20 years they're not to code. This currently is a stable road on a stable mountainside by the time three variances are fixed will it still be a stable road on a stable mountainside?

Commissioners, you're probably familiar with the old saying, If it ain't broke, don't fix it. I'm asking you as it says up there for the protection of their property please leave well enough alone and give Susan and Shari the three necessary variances. Thank you.

CHAIR MARTIN: Thank you, Dr. Rowley.

[Duly sworn, Bruce Delig testified as follows]

BRUCE DELIG: My name is Bruce Delig. I live at 100 Mountaintop Road in the Overlook Homeowners Association where I am a board member and all I can say is that driving up to Shari and – sorry, driving up to Hearts Way is an incredibly simple road compared to driving to my home at the top of Mountaintop Road which is opposite their property off of La Barbaria Road. And all I can say is I am very envious of the road they have to drive on. Thank you.

CHAIR MARTIN: Thank you, Mr. Delig.

[Duly sworn, Liz Sheffield, testified as follows]

LIZ SHEFFIELD: Hi. I am Liz Sheffield I live at 17 Camino Delilah, Santa Fe, 87506 and I have been sworn in.

I'm here to offer my support of granting the variances which would allow the opening of Hearts Way Ranch. I am a realtor in town and over the course of 16 years have probably traveled every road in Santa Fe County and it is my opinion that the

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existing road is safe and the retreat will not cause additional road traffic. As a matter of fact, if the two casitas were to be rented out as vacation rentals on a short-term basis as they had before the increase in traffic could be significant. That is not the case proposed here. The driveway that we talked about is for the use of the residents only. The casitas were both below the driveway and the guests as has been said recently is that they will not have cars.

Regarding the fire risk I've never seen a property in Santa Fe that has the added fire suppression features and safety measures that this property currently has in place and with the addition of the other measures that they're going to put into place, I've never seen anything like it in all my years in Santa Fe.

The addition of this retreat to Santa Fe will be a huge benefit to our city and to society at large. I know firsthand the need for such a facility in this country and would be honored that it be here in Santa Fe especially its unique environment for healing and growing.

I am in favor of Hearts Way Ranch and the women that would be running it. Thank you.

CHAIR MARTIN: Thank you, Ms. Sheffield.

[Duly sworn, James Clemens, testified as follows]

JAMES CLEMENS: My name is James Clemens and I am a principal in Clemens and Associates Landscape Architects and Contractors. I am in favor of granting the variances at Hearts Way Ranch. In April I was invited to visit the property by Susan and I walked the driveway from bottom to top. It is an excellent, stable, foothill road. I have seen far worse roads in such subdivisions as Hyde Park Estates and Apodaca Hill neighborhood. Thank you very much.

CHAIR MARTIN: Thank you, Mr. Clemens.

[Duly sworn, Alison Bruce Shaffer, testified as follows]

ALISON BRUCE SHAFFER: My name is Alison Bruce Shaffer and I live 10 Bluebell Court, Eldorado, New Mexico. And I've been to Hearts Way and I know Susan Carter through her work with the Komen Foundation and I found no trouble in getting up the road. As a matter of fact, I've been to other properties in Santa Fe which were actually more difficult to get through. And I support the variances. I think this is a good cause and I think that Susan and Shari will do a great job.

CHAIR MARTIN: Thank you, Ms. Bruce Shaffer; is that right?

[Duly sworn, Rhea Maxwell, testified as follows]

RHEA MAXWELL: Good afternoon. My name is Rhea Maxwell and I live at 1896 Lorca Drive in Santa Fe, 87505. Can you hear me? Is that better?

When you said you only wanted to hear about variances my - what I wrote was about Susan and Shari and the project but I drove up there again yesterday and I certainly support the fact that the variances should be approved. It was an easy drive and if there had been car that had needed to pass I wasn't - and I'm an old driver and I wasn't afraid.

But mainly I just am here to support Shari and Susan and this project because the plan to create a retreat that let's women get back their lives is really important. A woman touches many, many lives and a healthy and happy woman is a great contribution to society as we know it and that's what they are anxious to provide for us. So I hope you will approve their petition. Thank you.

CHAIR MARTIN: Thank you, Ms. Maxwell.

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[Duly sworn, Wendy Jordan, testified as follows]

WENDY JORDAN: Hi, my name is Wendy Jordan and I live at 50C La Barbaria Trail. I wasn't really planning on speaking but I think it is important for you to know that the people, the Dasberg Estate is directly on the south border of their property. I definitely hope you approve this variance because I would hate to see changes made into the road and have all the big equipment coming up to make any kind of changes which I don't even see as improvements because it is an amazing road. I've been up there several times. And to address one of the questions you had earlier about the maintenance, the owners of the property that I live on they maintain our roads in the winter and they do an excellent job and I believe that they are the ones that will also be taking care of that property. So, we've never had any problem getting up our roads and I know that as soon as there's any indication of snow coming they get ready and actually my partner that I live with is the backup so if the Dasbergs are out of town or the Sheltons I should say, we are the backup to taking up the plowing of those roads. So they always stay in very good condition.

CHAIR MARTIN: Thank you, Ms. Jordan.

[Duly sworn, Roger Said, testified as follows]

ROGER SAID: My name is Roger Said and I live at 3005 Monte Sereno Drive for the last four years and we chose to move to Santa Fe - I've never lived in Colorado, West Virginia or Colorado or New Mexico. The places I have lived have been on the prairie and very flat so introduction to terrain, elevation and inclines is all new to me but we chose to build a house four years ago and we had to go through a similar process of gaining variances due to the driveway length and the incline and we worked closely with Fire Marshal Gonzales. He looked at our situation and we accommodated with fire suppression systems and changes in the driveway but for the most part we were granted the variances that we needed to access our property and I see this as a very similar situation in which accommodations should be made to allow anywhere from two to six guests as clients to access the property on an off basis versus having long-term or short-term leases which would potentially cause more traffic.

So I clearly and totally support the application for these variances. Thank you.

CHAIR MARTIN: Thank you, Mr. Said.

[Duly sworn, Sandra Rowley, testified as follows]

SANDRA ROWLEY: I've been sworn in. I'm Sandra Rowley and I live at 38 Camino Tortuga and my house - I've lived there for 19 years. My property borders on Susan and Shari's property, quite a long border. And I have known this road for 19 years. And I just wanted to say that I ask you to approve these variances because I know this road well and I've seen it be improved and it is in excellent condition and I consider it an honor and a privilege to have this wellness center right next to my property.

CHAIR MARTIN: Thank you, Ms. Rowley.

[Duly sworn, Barbara Dorn Drew, testified as follows]

BARBARA DORN DREW: My name is Barbara Dorn Drew and I've lived in Santa Fe for 35 years and I currently live at 2307 Brother Loop Place, Santa Fe, 87505. And what I just wanted to add to all of this is that there are so many places for people to rent in Santa Fe and the Santa Fe area but there are no wellness centers like the one being proposed by Susan and Shari and this is a place that is going to transform lives and this is important to the world. All of this - these are women who have been

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successful in life and then came up on a stumbling block and so this is a way to change people and put them back out into society where they can give their gifts and transform other people's lives so I certainly hope you'll support these variances.

CHAIR MARTIN: Thank you, Ms. Dorn Drew.

[Duly sworn, Duchess Dale, testified as follows]

DUCHESS DALE: My name is Reverend Duchess Dale. I live in Park Plaza, Santa Fe, 87507. Good afternoon, thank you for this opportunity.

As per your request I am not going to address personal testimony for Susan or Shari. You can reference that in the letter I sent at the previous hearing but today I feel moved to address that in my line of work, ministry, healing could also be considered a variance of the body, mind or spirit. And so as had been stated eloquently even if the *New York Times* is now affirming what we know as residents here in Santa Fe and what our ancestors have known, this is a sacred land and therefore I am asking for a request to approve the variance so that it is an extended healing land with the opportunity for this retreat center to support our highest and best interests. Thank you for your time.

CHAIR MARTIN: Thank you, Reverend.

[Duly sworn, Walter Drew, testified as follows]

WALTER DREW: Good afternoon. My name is Walter Drew and I also reside at 2307 Brother Loop Place, 87505. I've lived in Santa Fe for 48 years. I actually built the Shelton's house just below this property. So I am intimately familiar with this road. I was there four weeks ago and my support for the variance is that this will be less intrusive from a traffic standpoint than utilizing the two casitas as rental properties. Thank you.

CHAIR MARTIN: Thank you, Mr. Drew. Are there other people to speak in favor of the application? If there are no others, Mr. Graeser.

CHRISTOPHER GRAESER: Chris Graeser, 316 East Marcy. I'm an attorney appearing under my oath.

Good afternoon. I do represent Catherine Joyce Coll and a group of road users who identify themselves as the La Barbaria Trail Association and who are parties to the road maintenance agreement and that road maintenance agreement is just for La Barbaria Trail there is none for the other roads. They have hired me because they are concerned about usage of the roads. They are concerned about impacts of the roads, particularly, La Barbaria Trail which is a private road.

We applaud the work of the applicants. It sounds like they are doing amazing and they have a huge amount of support for that work. If there is any criticism at all it would be that I think that's an opportunity that needs to be available for locals who can't afford this type of facility but they are doing great work, clearly. That's not why we are here. We are here because of La Barbaria Trail because of Camino Tortuga and because of Sendero de Corazon. They do not meet current road standards. They are steeper than allowed by the code. They are narrower than allowed by the code. And when I say code I mean both the Sustainable Land Development Code and the Uniform Fire Code.

This area would not be allowed to be platted now. You simply couldn't do a subdivision and build roads like that. But it is and there are people who live there. We don't need to make it worse and the requested variances are in furtherance of an application to change it from non-residential use to a commercial use.

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The roads are significantly below the applicable safety standards, very significant in some places. The driveway, there has been some discussion of what the slopes are, I believe you actually have a plan profile in your packet, if you don't, it's in the County's packet showing significant portions of that driveway up to 26 percent slopes I saw in there and bear in mind this is a driveway that is allowed 10 percent under the County code, 11 percent under the Fire Code.

La Barbaria Trail, this is a local road under the Sustainable Land Development Code the allowable slope is 7 percent. There is a statement in your staff report that the grade on this offsite road meets code requirements: that is not correct. La Barbaria Trail has slopes up to 14 percent, twice the allowable grade and this hasn't been part of the discussion and hasn't been part of the request for the variance because people were assuming it met the 7 percent grade: it does not. La Barbaria Trail is as narrow as 9-feet wide. Nowhere is it more than 18-feet wide. It's got a 20-foot easement: a 50-foot easement is required under the code. The intersections are also non-conforming.

Let me start with the Fire Department you were handed earlier. The new one from September 7th from Inspector Gilmore. This concerns me, this letter. In about the middle of the second paragraph it says, This project has been approved with the conditions previously stated.

CHAIR MARTIN: I'm sorry. Can you tell again the date on this letter?

MR. GRAESER: The September 7, 2016 letter. You were handed it at the beginning of the meeting. I think on yours it is properly red at the top there.

CHAIR MARTIN: Okay, yes.

MR. GRAESER: And of course, as typical, initially the Fire Department recommended the width and the grade for the road and then it recommended conditions of approval if it was approved anyway. Mr. Gilmore's letter says this project has been approved with conditions, that is incorrect. The Zoning Hearing Officer recommended approval but no one has approved this application at this time. This gives me significant concern because it makes approval look inevitable and makes it look like a decision has been made. And no decision has been made. It is your decision to make.

The second thing you'll notice about this letter is it does not recommend approval. The applicant stated that it recommended approval: it does not recommend approval. I challenge anyone to find that on there.

You know, but more to the point, there has been significant concern expressed about these roads, about this canyon, about the dangers of this canyon by the fire fighter professionals who have their boots on the ground in the area. I've handed you a packet of materials and I recognize that it is fairly large. It's also highlighted and I'll read through and you're welcome to do so at your leisure. I'll read a couple of key passages. On July 13, 2016, the current chief of the Hondo Fire District, which is the fire district for the location, Terry Protheroe, stated, and this is a letter to Ms. Joyce Coll, As we discussed, the fire danger conditions in your area have not changed since the letter from Chief Chilton – I'll get to Chief Chilton's letter – in the event of a wildland fire in La Barbaria Canyon evacuation would still present a considerable challenge to keeping residents safe and to our efforts of fire suppression. And along with that letter District Chief Protheroe provided a number of documents. The first one is what is called a Wildland Pre-plan Checklist. It's for advanced planning for emergencies. And there's a couple of different categories they rank. The first one is fire threat life/property: high to end of pavement

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transitioning to extreme/urban interface and rural. Roads/access: all roads are one way, narrow some with limited weight limits. Main roads are substandard with tight turns which will not allow large trucks to pass. Thick vegetation to roads, many drives are heavily rutted and will not allow for trucks to pass. Evacuation difficult, upper reaches impassable for trucks larger than type 6 engines. Again, this is all material from the Fire Department, for the district fire department. Communications, poor to no reliable radio communication to County main in much of area. Tactical channels also limited to line of sight. Portable repeater and/or radio relay system will be required for prolonged operations. Poor quality of radio reception presents a hazard to responders and residents. Evacuation and escape routes: large sections of main roads run through the bottom of heavily wooded bosque and are in chimneys posing extreme hazards to evacuees and first responders. Because of narrow roads and threat of large trucks closing the evacuation route off. Caution should be exercised before committing large trucks beyond the paved portion of La Barbaria.

It then goes on to a narrative. La Barbaria Road is fairly heavy with P&J, pinon and juniper, up to residence 81. At that point, road becomes choked with a heavy growth of P&J and dry river willow which will carry a fire quickly. The onset of a fire that starts at OST, which is Old Santa Fe Trail, bridge, even if moderate wind will travel that distance in less than an hour. With a strong morning up the canyon wind, travel will take less than one-half hour, meanwhile, spreading up the slope on both sides. Any residents above residence 81 will not escape down the road because of high heat and dense smoke until the fire passes. Cars will pile up on the road trying to get out.

This is what the fire district is saying. La Barbaria Trail is 15 feet wide and less in some area. As I've said there is evidence in the record that it 9 feet and less. Conclusions: the Arroyo Hondo with its tall, dry, continuous growth of stream willow is the wick to much loss of structures and very possibly lives. Any fire that travels up the arroyo at faster than a moderate advance will leave very little time for residents to escape. A fire in the Overlook area will quickly crown because of low branches and dense undergrowth. From that point on it will be difficult to stop it from spreading into the Apache Canyon. This road could quickly become blocked with fallen trees and branches making travel next to impossible.

Under fire threat to life and property it is listed as critical to extreme. Under hazards to roads and access, all one way in same way out. Mr. Chief Protheroe referenced the former chief, Chief Chilton's letter back in 2012 when someone else was requesting a variance in this same neighborhood that the then CDRC denied. As we have discussed much of the land east of intersection of Old Santa Fe Trail and La Barbaria Road has classification of extreme in the US Forest Service Fire Assessment System. There is only one means of egress for residents of the 140 plus homes that are accessed via La Barbaria Road. The possibility of congestion on this road is very high if a large number of residents choose to evacuate at the same time. This condition will be even more hazardous if smoke is impairing visibility. There are places in this area where the road is not wide enough for a 10-foot wide fire engine and a passenger vehicle to safely pass in opposition directions.

As I said, that was Chief Chilton's letter submitted at the time of a prior variance request was made and former Fire Captain Buster Patty testified to the CDRC in that meeting. Captain Patty said it is an extreme wildland area. It is a difficult road and area.

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Member Drobnis asked if the letter from District Chief Chilton accurately describes conditions in the area and Captain Patty said it does.

So three firefighting professionals with their boots in the ground in the area, two of them the district chiefs for Hondo District, are extremely concerned about this – the safety of this canyon.

There is a required legal analysis to grant a variance. I went into in detail in my letter which is in your packet. I also included it in the handout because the handout includes the exhibits that were not included in your packet. First – and these are all elements required to grant a variance, this isn't a kind of weighing test. Is it contrary to the public interest? This is a change of use on an already substandard roads. There is an extreme fire danger. We can't make the roads better as there has been significant testimony but we can prevent the situation from getting worse. There has been no traffic impact analysis. So we don't know what the impact will be. We've heard a lot of testimony almost entirely from people who don't live there as to what the prior use was, what the current use could be, what the new use will be. There has been no analysis of that by an engineer so we don't know.

The request for a variance here is one to violate safety standards. This is not a dimensional variance like I want to build my house taller, I want to reduce the setback. These are safety standards. Diminution in safety is not in the public interest by definition. It's a variance to fundamental safety standards and the bar for the variance should necessarily be very high. And this is a variance from provisions of the new code. This was just adopted. This is not an old outmoded regulation. This is brand new code that the County Commission just adopted and adopted for a reason.

Second, will it result in unnecessary hardship? This is what lawyers call a term of art. Unnecessary hardship has been defined by our supreme court and it means something specific. First, is the property distinguishable from other property that is subject to the same zoning restrictions? The answer here is, no. It is facing the same issues as all of those 140 properties on this subdivision or neighborhood or the same steep slopes. Everything in red is greater than 30 percent slopes. The orange, greater than 20 percent slope – here's the property we are talking about. Everything in the area is facing those same extreme slope conditions. There is nothing unique about this property. It is not distinguishable from properties, a required element of a variance analysis.

Next, will the owner be deprived of a reasonable return if the variance is denied? There has been no evidence whatsoever about that. I made this point in front of the Zoning Hearing Officer and there is still no evidence at this hearing. None whatsoever. It was a residential property. It was listed for sale as a residential property. It was used as a residential property. It was purchased as a residential property and it can still be used as a residential property. In fact, the listing materials indicated that the prior owner rented out the casitas and that covered most of the expenses. It is possible the current owners bought it thinking they would use it for business but the reality is that they didn't do their due diligence. Had they done their due diligence they would know that it's going to violate the road standards to try and get a commercial use here. It's unfortunate if they bought it in fact specifically for a business use that they did it without that due diligence. But they can continue using it for residential purposes. They can make a reasonable return on their investment and that is the test. Will the owner be deprived of a reasonable return?

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Mr. Said I believe talked about buying a property and needing variances to build a house. Very different situation because if he was denied the ability to build anything on his property that is a taking. That is depriving reasonable use of the property and variances are probably warranted there. Here, there is already a house there.

And, finally, the Supreme Court asks if any reasonable use can otherwise be made of the land and the answer is clearly true. Residential is a reasonable use. Keeping it residential is entirely reasonable.

The Zoning Hearing Officer did recommend approval. I've got several concerns about that recommendation. If you look at it, there's only one paragraph that actually addresses the findings of fact and that's paragraph two on page 5 and it's very, very summary conclusion, conclusory conclusion. The Supreme Court has told us that the decision making body should provide a clear statement of what it specifically believes after hearing and considering all of the evidence to be either relevant and important facts upon which a decision is based and a full explanation of why those facts led it to the decision it makes. And that is not in the Zoning Hearing Officer's proposed order. So I would suggest that this Board exercise its independent judgment as to this application and not feel bound by that proposed order. The order from the Zoning Hearing Officer does not address the relative grades and degrees of variance and here's an issue because by in large we don't know what the existing grades are. We don't even know what the variance request is. We don't know how much of a variance it is. Some of those, and we have a plan profile for the driveway so we know that. We've done some work, the last page of the packet I gave you is some work a surveyor did for us showing that La Barbaria Trail has up to 14 percent grade. So we know that their request is a doubling for the variance. But by and large we don't even know what the variance request is, much as we don't know what the traffic impact is going to be because no engineer has looked at it. We don't even know what - how much of a variance the applicant is requesting.

The Zoning Hearing Officer's proposed order doesn't address width, doesn't address how trucks can pass, doesn't address the required legal analysis for unnecessary hardship in granting a variance.

There are people who spoke in support. There are petitions and letters in support. The vast majority of those focus on the good works that the applicants are doing not on variance criteria and how this application meets those variance criteria. And, again, we are not opposed to them offering this service.

There was a reason that staff recommended denial and I've included in your packet the original staff report that includes staff's recommendation of denial. The recommendation of denial by staff has been removed from the report that went to you because the Zoning Hearing Officer subsequently saw it. But staff recommended denial, that's in the packet I gave you. And there's a reason they recommended denial. The Zoning Hearing Officer was off the mark and we ask you to independently review that.

I don't think I have anything else in my packet. Oh, you know what, let me address a couple of comments that were made.

The constant testimony that it's not going to be an intensification of use; again, we don't know because we just aren't given figures on that. But it's interesting how that play out with respect to the significant discussions about economic development, economic opportunity. Either it's a business that is going to provide jobs for a lot of people, in which case, there is going to be a lot of traffic going up that road or there is not

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going to be a lot of traffic going up that road but it is not going to be have that much of an economic impact. You can't really have those both ways. But, again, we don't know how many employees are going to be there. We don't know. We do know that there's – the materials indicate that there's various service opportunities. They certainly are going to be moving people in and out.

There was a discussion from Member Gonzales about water availability. They have a real problem here. There are covenants on the property that limit it to .4 acre-feet per year. Their water budget is 1 acre-foot. Those covenants were subsequently purported to be amended to allow an acre-foot but the original covenants include property owners who can enforce it and Dennis is at least one of those here today who has the right to enforce those original covenants. He never signed on to amending them. So he can still enforce that .4 acre limitation. Not that it is too relevant to the variance but it was brought up. They've got a significant water problem going forward.

There was a lot of confused testimony in statements about road maintenance and whether they are contributing or not and what the use of the contributions are. Ms. Joyce-Coll will testify that anything that has been contributed to pay me is different from road maintenance funds. But the fact is there is no obligation for the applicants to help maintain those roads. They can if they want. They have no obligation to do so.

And really there's been some discussion of the amount of current traffic, the condition of the roads – that's not so much what we are focused on. We are focused on the geometric roads of those roads, the width, the slopes.

Applicants say that this is perfectly suited in every way imaginable, except for it violates the code. You can't do the use without getting variances. That's a significant problem. And, again, stated don't let the variances stand in the way of healing work. Well, it is not the variances that are standing in the way: it is the code with safety regulations that are standing in the way of using this particular property for doing work that could be done anywhere else. There's a lot of discussion of, well, if the variances aren't granted we'll come back for variances to rebuild the roads differently. Well, this body doesn't have to grant those variances either. The point isn't the roads need to be rebuilt and scar the mountains more. The point is this use just probably shouldn't be at this property.

I appreciate your time and I'm happy to answer any questions.

CHAIR MARTIN: Thank you, Mr. Graeser. Are there questions for Mr. Graeser from the committee?

[Duly sworn, Richard Bank, testified as follows]

RICHARD BANK: I'm Dr. Richard Bank. I live at 6 Owl Creek Road, Santa Fe, New Mexico, 87505. I've lived there since 1986. I believe that I share a border, my wife and I, share a border with the applicants although I am not sure exactly how that parcel was ultimately subdivided. But if we do it is on their western edge and our eastern edge. And I'm speaking against granting the variances so there wasn't a little silver star on my lot and, in fact, again, and I mentioned this before the Hearing Officer too, they claim to have reached out to all the neighbors, we have still not been approached.

My concern is fire. But I'm not going to be repetitious because I'm a social scientist. My degrees are all in the social sciences and I'm going to talk about not the problem of getting trucks and fire equipment up to the land I'm going to talk about fire

causes. There's a 2016 book on addiction studies, a monumental collection edited by a scholar named Victor Preedy and it's entitled *Neuropathology of Drug Addiction and Substance Misuse – Volume 1; Foundations of Understanding Tobacco, Alcohol and Opiates*. There is a study in that monumental work by Gaitland and Callahan entitled *Tobacco Related Mortality Among Individuals with Alcohol or Drug Use Disorders*. In the beginning of that article they talk about codependent, codependent addictions between tobacco and alcohol and tobacco and opiates and across all cohorts. Now this means they are looking at all kinds of people, every age, every gender, every social class, every religion across all cohorts of co-addiction with tobacco of people using alcohol or misusing alcohol is 75 percent. Which means that 75 percent of people who are addicted to alcohol are also addicted to cigarettes or tobacco. It ranges for alcohol as high as 90 percent when you exclude younger cohorts. So older people who drink tend to excess tend to smoke more. For opiates, cocaine in particular it's again, across all cohorts, it's 74 percent. For all other opiates and narcotics it's 79 percent.

So what do these statistics tell us? It says that the majority of the women who will be at this facility will be addicted to tobacco. I brought this up at the – before the Hearing Officer and the lawyer for the design company that works for the applicant said and I quote, I wrote it down, Smoking will not be permitted on the property. What does that mean? Does it mean that the addicts – and remember we are talking about addicts and not only are we talking about addicts but according to the applicants themselves we are talking about addicts who have not deal with the underlying issues that cause their addiction. The treatment that they've received for alcohol addiction or drug addiction, that is well and good, but have they received treatment for nicotine addiction? My guess is not. So what we have is a majority of these women are going to be smokers. They can't smoke on the property so what are they going to do? Walk into the adjacent National Forest and have a cigarette there? And if they do that on a windy spring day and carelessly toss just one cigarette butt the entire canyon is at risk and not just the canyon because the Santa Fe Watershed is just a hop, skip and a jump from that property. I know because I have hiked all around there long before these applicants bought that property and I continually get lost and run into fences that say Santa Fe Watershed do not enter. And, of course, I don't enter. I go back home, if I can find my way.

In any event, what does it mean to say that there will be no smoking on the property? We are talking about people who are going to want to smoke. If they say, No, no, we are not going to let them have cigarettes what does that mean; they're going to go cold turkey? Or are they going to be allowed to smoke in town when they take them in to do community service. But then, my god, are they going to have to search them and their belongings every time they go to town to make sure they don't have any cigarettes on their person? Is this consistent with the treatment model that is, I would assume, based on trust?

So I am very concerned with the danger that these clients are going to bring to our community. They don't understand the extreme fire danger that we face. They don't understand that. Someone from Vermont, they walk in their forest and throw cigarettes burning and they just go out it's so wet there but not here. And we all know this. So I'm wondering what they're going to do about this problem. The problem of smokers who they won't allow to smoke on the property and actually it would be safer if they did because they have all those fire suppression stuff to protect their own property but what

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about the rest of us who live up there. What about the Santa Fe Watershed? What about the liability of the County which has been informed of the risk and approves these variances and then watches this canyon and the Santa Fe Watershed destroyed by a wildfire. I wonder, I don't know, but I wonder about the County's liability for granting approval to a set of variances that allows this project to go forward.

I would also ask because I've been doing a lot of research – well, not as much as I used to do, but a lot of reading at least in this newly published work and – and I would reserve the right to respond to anything the applicants might say in rebuttal to what I have said. Thank you. I'll stand for questions.

CHAIR MARTIN: Are there questions of this witness? No? Thank you very much.

[Duly sworn, Catherine Joyce Coll, testified as follows]

CATHERINE JOYCE COLL: I am Catherine Joyce Coll. I'm the seemingly infamous neighborhood chairman and I just had a few comments that I wanted to make.

CHAIR MARTIN: Could you give your address for the record.

MS. JOYCE COLL: Oh, sorry. It's 83 La Barbaria Trail, Santa Fe, 87505. But before I make them you do have a letter from me in the packet that the County gave you that I wrote on behalf of all the neighbors opposing this which is all but two. And there are I think 14 of us. Also, I would like to say that the Dasberg property has a tenant in it, Wendy, who spoke and she is very much in favor of this project but the trustee for the property, Debbie Park, has voted against this project and she is adamantly against this project.

I wanted to clarify anything that you were wondering about that has to do with our neighborhood association. I have here a copy of the road maintenance agreement and this was signed and notarized and recorded with the County in late 1990 and it's always been understood – my husband and I did get a copy of this when we bought our house 15 years ago. And most – I'd say half the people who signed this still live there and the rest of us have assumed and I can't remember why, but I think a lawyer told me that when we were fighting another project, a big development down the road, that the obligation to pay road maintenance and participate travels with the deed to the property. So whether that is true or not, I don't know but that is what we have always thought. And everyone on La Barbaria Road and on Owl Creek which is off it and has four houses on it belongs to the road association. Tortuga was developed after this was written and it has three houses on it including the one that we're dealing with. Dennis Lopez who is sitting behind me lives up there. That was all his family land. The Rowleys live up there and Susan Carter and her friend Shari Hughes have their place there. And we do meet. We haven't met in I think three years. We have always taken phone polls on things sometimes. Somebody, Susan criticized our fire mitigation. We have raised dues several times. I think they were \$125 a month when we moved up there. We raised them to \$500 when we started inviting all of our fire chiefs to our neighborhood meetings and we've had five fire chiefs and every one of them has said we might have to shelter in place if there is a fire. They've said we needed to do fire mitigation so we raised the dues to \$500 a month. All of our votes have been totally unanimous. We have never had a serious conflict in this association until this project was proposed and it is dismaying to a great many of us.

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But our fire chiefs have all said that there's going to be great loss of life and property if a fire ever blows up La Barbaria Canyon. And we have had two scares and they got them out. Our Fire Department is incredible. But every one of us up there lives with fear when dry lightning strikes and there's been no rain for a month. We wake up at night, our road in spite of what they're claiming: two cars can't pass on probably a third of La Barbaria Road. We maintain it as well as we can. Every fall we grade the road after the monsoons which wash it out. A large fire truck can't get up and I had a long talk with Terry Protheroe yesterday, and I said what do I say, what do you bring up there? He said, If we can get passed the pavement on La Barbaria Road which is another mile down La Barbaria Road which is dirt and then a mile up our road, he said we'd bring brush trucks. Those are the little trucks and he said if the smoke is too thick and people are trying to get out we can't do that because you're all going to burn up if we start trying to bring any vehicles up there. We've put in two turnouts at the request of the Fire Department and we have another small one. But all they'll handle are little brush trucks and they're really for pulling over so that two cars can pass.

Anyway, we maintain the road the best way we can and for three years we have been doing fire mitigation thinning trees along the road. Now the three houses on Tortuga has always paid dues as long as I've been there. And that unfortunately changed when Susan and her friend bought that property. Hoping for neighborhood unity after we voted I took Susan to dinner at La Fonda. We had a lovely dinner and I told her that the neighborhood had voted to oppose this project. She told me that she wasn't going to pay dues then because we'd be using them to resist her project. Now the neighbors all know that we may have to do that. So far six neighbors have contributed and what we've paid so far in legal fees we have covered but we know that before this is over we're going to have to use some neighborhood association fees but since we have an easy majority in favor of this, it's fine. We vote on everything.

So that's the neighborhood association. They are not legal members up there but because they use the road in the past everyone has paid. Everyone has shown up at the meetings that we hold and everyone has participated in the phone votes that we do. And the reason that we don't meet more often is because so many people own their homes and are only part time residents. We try to have meetings when we do when we have as many people living there as possible and a lot of the people are retired and they travel a great deal. So it's hard to get a quorum at a meeting sometimes.

So that's the road. Are there any more questions about our association? We're not incorporated and I didn't even know that was necessary and I don't think anybody before me has. We've had lots of neighborhood chair people.

CHAIR MARTIN: Are there questions of Ms. Joyce Coll?

MS. JOYCE COLL: Okay, then I just had a few other comments I wanted to make. I'm sure you've all read my letter but one of them is that, you know, that obviously this is very rugged, steep terrain and it couldn't be built on now. It's a totally inappropriate place to put the kind of treatment center that they want to put there. I'm sure Santa Fe needs it although I question it because this is not something that most New Mexicans will ever be able to afford. Shari told me that they're charging \$15,000 a month per person. Most of the people that we know live on less than half of that. So none of these people testifying could probably afford to put their relatives or friends in the center. It's going to be very elite and Susan has said to the Hearing Officer and to me

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that they would be advertising out of state. So aside from the fact that they have a cleaning crew, probably a chef, possibly drivers for the people there, you know, this isn't going to create many jobs. It's going to cost a fortune and it's going to destroy an old beautiful neighborhood. There are very few of us. We know each other's cars and we are very careful with each other. There is rarely dissention. Some of us aren't the best of friends but we all get along and we love where we live. There's an amazing amount of wildlife. Bears took my bird feeders down last night. You know, New Yorkers, Texans from Dallas they are not people that will be safe wandering around with cougars and coyotes and everything else that we've had.

Let me see if there's anything else. Oh, they said that traditionally those casitas had been rented out. Well, that's kind of half true. James Rosenfeld lived in the lower casitas for about 10 years. The other casita was vacant all through the people who built the house they never had a tenant in it. And the Loftins never had a tenant in it. They kept it there for their grown children to come. Just be – when they put the house up for sale the Starks put a tenant in the house and she stayed there until the house was sold to Shari and her friend. But they traveled all the time so they weren't there very often and that house has never had a full-time owner, ever. They have all been part-time people. The Starks lived in Georgia and came out twice a year for a month. The Loftins stayed for a couple of months then bought a huge house in Texas because his wife didn't like Santa Fe. So, yes, they're already having a huge impact. I've had calls from neighbors saying that strange cars had run them off the road.

I guess that's the end of my comments. Whatever happens I would be really grateful if they paid their dues. I guess that's everything. Thank you.

CHAIR MARTIN: Thank you, Ms. Joyce Coll.

[Duly sworn, Mike Peterson testified as follows]

MIKE PETERSON: Good evening, I guess it's evening. I'll try and make it short. My name is Mike Peterson, 38 Owl Creek Road, 87505. Owl Creek is another one of the roads that goes off of La Barbaria Trail. My wife and I have lived on Owl Creek since 1998. My wife actually was in charge of the road association for about five or six years.

I can't say that I am adamantly opposed to this. I think it is a good cause. As I told Susan when she contacted me about it my real question is why here? I'm not sure that this is the best place for it. I leave that to other people. I don't get to make that decision. But let me make two comments, two of my concerns. One is that I fear that this is a foot-in-the-door. We moved to La Barbaria Canyon it was paradise and it is very, very rugged. We moved there primarily because I had three small boys and I wanted to have them have the opportunity to grow up in this environment. I know that the County has changed its zoning regulations. That was a concern to me because again I hate to see this area become commercialized. I doubt whether Hearts Way Ranch will make a big difference over the way things are right now through if the County gives its formal stamp of approval, will there be followers? The other thing that slightly concerns me is when Susan said in response to one of your questions about whether there would be more than four or six, she said we don't have plans for that at this time and I would hate to see this become a much larger retreat.

The second thing that concerns me is the road association. As I said, my wife ran it for around five years. We have paid lots of money into it and it bothers me that not

everyone does pay money into it. And before this whole thing – ideally for me we'd have the road association straightened out and know who is responsible for what before we have these new uses on the road.

I guess the last thing I would say is that there was one comment about snow removal that is outside the road association. Jay Shelton, one of the people who lives on the road plows for everybody but we reimburse him for the time that he spends plowing. The road association dues for maintenance of the road is entirely separate.

[Ms. Joyce Coll speaks from the audience away from the microphone.]

Oh, okay, I'm sorry. I'm sorry. I live 38 Owl Creek means that it is 38/100th of a mile off La Barbaria Trail so I have to pay Jay for plowing Owl Creek Road and then my own driveway.

And then the last thing is fire is a concern in that canyon. We have been told several times by the Fire Department that they will not come to us if there is a fire. I remember when there was a fire, and I forget the name now, but the fire in the Pecos Canyon 15 years ago and there was a huge smoke plume. We were told that we would probably be told to evacuate in an hour. That was pretty startling. I can't say that I vigorously oppose it. I sympathize with Hearts Way Ranch and their objectives but as a neighbor who has now lived there 18 years I wanted to voice my concerns.

CHAIR MARTIN: Thank you very much, Mr. Peterson.

[Duly sworn, Dennis Lopez, testified as follows]

DENNIS LOPEZ: Dennis Lopez, 26 Camino Tortuga.

CHAIR MARTIN: I'm sorry, I didn't hear your last name.

MR. LOPEZ: Lopez, Dennis Lopez, 26 Camino Tortuga. I'm not much of a speaker. A couple of concerns: I always wondered how they got the three residences on there before for 10 years I tried to build a casita and never got it approved because of water restrictions. I don't know how he did it and I just found out today that the third one he did without permit. That surprised me but okay.

It's been in my family, this 80 acres, originally since the 20's. I ended up with 13 acres or 11.5 acres and Rowley is a neighbor. I take care of Camino Tortuga because he doesn't participate in that. He doesn't contribute. There is only two people here that talked on their side that were residents. Everybody else is not going to be impacted by this. Every year there are two or three people that slide off the road in the winter and you need a four-wheel drive to get up there in the winter. It's dangerous in the winter. The fire hazard everybody has spoken to. The reason why I didn't get my permit was water restrictions. I had a hydrologist, \$20,000 and about eight years trying to get that done. Never got that done. But who is responsible if all these extra people run our wells dry. I mean, we're all neighbors. We're probably all on the same aquifer. That concerns me.

And when this first came up the first representation I had it was going to be a drug and rehab center for women. After they looked at the zoning it became a retreat. I just have questions with all of this and I think it should be denied. Thank you.

CHAIR MARTIN: Thank you, Mr. Lopez. One are only allowing one statement –

[Mr. Rowley stands without a mike and says he is confused about the discussion when it should only be on the three places that don't fit code and require a variance.]

CHAIR MARTIN: Thank you, sir. I will turn that over to County Counsel. Would you like to address his question?

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ANDREA SALAZAR (Assistant County Attorney): Regarding the hearing itself, this is for the three variances and that is what they are discussing is solely the three variances.

CHAIR MARTIN: Thank you. Are there any other members of the public that would like to speak? If not, I'll hear one last time from the applicant.

MS. JENKINS: Thank you very much Chair Martin, Commissioners. I will be brief. I just wanted to clarify a few items that came up.

There was a comment made regarding the degree of the variances being requested so we provided engineer plans and profiles of the driveways, of Camino Tortuga as well as Sendero de Corazon. So I quantified it a little bit. The steepest part of the driveway is 21 percent for 13 linear feet. So probably like from there to maybe to like here. That's the steepest part. Then it drops down to 17 percent. Then it drops down to 14 and then to 13. In total approximately about 20 percent of the linear footage exceeds 10 percent. So if you want to quantify the variance that we are requesting with respect to the slope, with respect to the grade, it's 20 percent. Twenty percent of the linear footage of the driveway access exceeds a 10 percent grade. So I think that's helpful information and I am happy to have the opportunity to clarify that for you.

There was a lot of talk about safety but yet no evidence at all that what is being proposed with the retreat has any safety implications at all. Quite the opposite. You have testimony that the driveway is in excellent condition. It was improved to the tune of hundreds of thousands of dollars with the collaboration and direction of the Fire Marshal's Office. How do we make it better? How do we make it as safe as possible without scarring the hillside and in addition you have a memo from the County Fire Department recommending approval. I think that maybe there was some semantics and the County Fire Department is here so I would encourage you to question them to clarify their wording in the memo with the addition – in addition to the 20,000 gallons of water storage, in addition to the draft hydrant, in addition to the hoses, in addition to the turnouts, in addition in addition, sprinklers in all three dwellings. So if there is such concern about safety these should be applauded if we're so concerned about safety. My clients are concerned about safety and can be investing even more in ensuring that this is one of the safest mountain properties in Santa Fe County, easily, easily.

There is nothing in evidence that anything here is going to make it worse, nothing at all. What is in evidence is that the temporary part-time guests in the casitas will not have cars. That is what is before you.

And with respect to the water covenants, I have the amended water covenants for Lot 4 that have been executed by Santa Fe County. They have been reviewed and approved by the County hydrologist as well as the County Attorney's office. I only have one copy but I am happy to provide this to you. Maybe you can share. I apologize that I did not bring additional copies. But this issue was vetted thoroughly with County staff as well. I might also point out this property is one of the largest in the area. The lots that were originally subject to the original covenants, 11 acres, 12 acres, 16 acres, this property is 39 acres. Significantly larger than all the other parcels.

And with that I would be happy to stand for any additional questions. I do really appreciate your time and attention. Thank you very much.

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CHAIR MARTIN: Are there any questions of the applicant? Thank you very much. This public hearing is closed. I will bring it back to the committee for discussion or a motion or both.

COMMISSIONER LOPEZ: Madam Chair, I make a motion that case number V16-5150, Hearts Way Ranch variance be approved.

CHAIR MARTIN: Do I hear a second?

COMMISSIONER GONZALES: Second.

CHAIR MARTIN: Is there any discussion?

COMMISSIONER BOOTH: Yeah. I'd like to bring a couple of things. I actually was – two things. I think we're putting the cart before the horse in this hearing. We're being asked to approve variances on a road without having really anything in writing about how that road is going to be used. How this property is going to change that road. To me, I would have rather heard the site development plan with the accompanying TIA to really know. We're hearing it's going to be two women, it's going to be four women, it's going to six women, maybe next week it'll 10 women. But we don't know because we don't have anything in writing. And so neither do the neighbors really know. And so they are concerned.

I was actually going to move to table this until we have the site development plan so that we would actually be basing our decision on real written information that had been publicly presented. So I am very hesitant to vote on a variance on something that I don't really know what it's going to be.

The second thing that really, really concerns me is that one of the things that we have to show in order to approve this variance is that it is not against the public interest. And in this case we're looking at different publics. And certainly I'm sure all of us are sympathetic with what a wonderful idea this is – a retreat center, alcohol addiction, etc – and that is a general public. In this case, I will lean towards those people who live on this road and their public interest because they are the ones who live in a wildland fire hazard area. They're the ones that have to face every day the tremendous high fire risk. Not the rest of us that are sitting down here going, Gee, it would be great to have a retreat center in Santa Fe for four women, that's fabulous. It is you people who live on this road every day. And in my – if something happened because of this intenseness increased use and someone and someone's house burnt down or someone got killed I wouldn't personally be able to live with myself.

And so in this case I will vote against this because I don't believe it is in the public's interest being the public interest of those people who live on that road and are going to be faced with, I believe, what will be an increased fire risk. So that's how I'm coming down on this vote and I encourage us – I wish I had a chance to put a table on it. I might vote very differently if we have a site development plan and I knew what I was voting for. But right now I am voting for a variance for something that could be as large as – who know, because we don't have anything in writing. So with that I encourage us, the rest of us, thank you –

CHAIR MARTIN: Excuse me, staff?

MS. LUCERO: Madam Chair, if I could just address Commission member Booth's comment about the site development plan and the traffic study.

CHAIR MARTIN: Please do.

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MS. LUCERO: The use of a retreat is actually a permitted use within this zoning district so the site development plan is going to be approved administratively. That will not be coming before the Planning Commission for approval. In researching our notes and the file the comments that we received from various reviewing agencies, a traffic impact analysis was not required for this particular type of development due to the minimal amount of traffic that would generated by the proposed project.

COMMISSIONER BOOTH: How is that decision made because I thought that according to the code it is required?

MS. LUCERO: It is on an as-needed basis for a permitted use and that determination was made at the Technical Advisory Committee meeting in concurrence with the Public Works Department.

COMMISSIONER BOOTH: I am not crazy about that. But in any case, I still rest on that this is not in the public interest for those people who have to live there.

CHAIR MARTIN: Thank you, Commissioner Booth. Are there any other comments?

MR. FRIEDMAN: I just have a point of order, with all due respect.

CHAIR MARTIN: No, the public hearing is closed. The public hearing is closed.

So can I take a roll call vote? All those in favor of the motion to approve the variance please signify by saying aye.

COMMISSIONER GONZALES: Aye.

COMMISSIONER LOPEZ: Aye.

COMMISSIONER GRAY: Aye.

CHAIR MARTIN: And those against. Nay.

COMMISSIONER BOOTH: Nay.

CHAIR MARTIN: So the ayes have it [3-2] the variances are approved.

MR. GRAESER: Point of order, Madam Chair.

MR. FRIEDMAN: Thank you, Commissioners, thank you.

CHAIR MARTIN: We will take a 10 minute break there has been a point of order raised about the vote. So we will take a 10 minute break and come back at 25 after.

[The Commission recessed from 6:15 to 6:30]

CHAIR MARTIN: Okay, here is my virtual gavel and I am gaveling us back to order and we will hear from the County counsel, please.

MS. SALAZAR: Madam Chair and Commission members, in variance in Chapter 14 in Section 14.9.7.4, the review criteria states a variance may only be granted by a majority of all the members of the Planning Commission or the Board on appeal from Planning Commission where authorized by NMSA 1978, Section 3-2-8C which that section itself says all members of the zoning authority only a majority of them may grant variances. Because of that, because there are seven members and with Chair Katz removing himself, a majority would still need to be four. Since we have no procedure and this is not a tie there is no way to rehear this so it would virtually be a denial of the variance.

CHAIR MARTIN: Thank you very much.

MS. JENKINS: Wait, wait. May I? May I? This is an unusual situation, may I please be heard on this question? May I indulge --

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CHAIR MARTIN: Yes, you can be heard but then I will also hear from counsel from Mr. Graeser.

MS. JENKINS: That's fine. That's fine. So we have a motion, the motion was not affirmatively denied. The motion failed, granted. The motion failed for lack of a majority of the full Commission. So that means it is not in the affirmative. I have been in this exact situation in other jurisdictions. So the motion failed. So it is just done. So there needs to a new motion. Similar to Commissioner Booth's thoughts on tabling. So that is – I have been in this situation, I would ask the legal counsel for Santa Fe County because the motion failed but it was not an affirmative denial. And we have – and so what I would ask, what I believe is the appropriate next step. I am not an attorney but again, I have been in this exact situation before.

So what is appropriate is a new motion that would need to be approved and would have to have an affirmative vote of four people. So I would ask for that to be considered because this was not, by not any means, was this an affirmative denial.

MR. GRAESER: Thank you, Madam Chair. An affirmative denial is not required. The Zoning Hearing Officer made a recommendation to the Planning Commission. The Planning Commission did not accept that recommendation. The project is not approved. I don't think you need an affirmative denial. I don't see that in the code. And if a motion for an affirmative denial was not passed either it gets us right back to where we were, so I don't think it's required.

CHAIR MARTIN: Thank you, Mr. Graeser.

MR. FRIEDMAN: I respectfully disagree. It is not – it doesn't automatically get denied if it doesn't – if there's not an affirmative vote of the Commission. Basically, you have a Hearing Officer who said, I recommend approval, and if you can't decide one way or the other, my suggestion is to table it so that you would meet properly and you could have a vote and you have all the Commission members here.

CHAIR MARTIN: I'll again defer to County counsel.

MS. SALAZAR: So first off, variances under case law the burden of proof is on the applicant and so if there is not a majority the variance does fail. Secondly, the Hearing Officer, although they did write a recommendation, it does not have the binding authority. It is whether you approve or deny. You are the deciding body. Secondly, if you so choose you could make a new motion but if you choose not to the motion that you have made does remain. So those are – so those are the advice and the answers.

CHAIR MARTIN: Thank you. So I bring it back to the committee – Commission, sorry.

COMMISSIONER BOOTH: Just a legal question that we have made a motion and we voted on it so now we can't vote to table it. We can't make a new motion to table it because we've already done it; is that correct? How can we table something we voted on?

COMMISSIONER GONZALES: Chair, also why did we even hear the case? Why did we hear the case in the first place if we didn't have – if we weren't – and they – but we didn't –

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MS. SALAZAR: Chair Martin and Commission members Booth and Gonzales, you do have a quorum and there are four of you. If four of you did vote to pass or deny the motion that would be a majority of the Planning Commission.

COMMISSIONER GONZALES: But we didn't -- you didn't know that until after we voted. We heard this case, if Commissioner Booth would have voted to table it everything is fine but we heard the case and we voted to approve -- why did we hear the case? We weren't going to know what the outcome was at the beginning of the -- without hearing it.

MS. SALAZAR: But you did hear the case and four of you could have voted on this.

CHAIR MARTIN: Well, it actually could have been an approval or a denial.

COMMISSIONER GONZALES: Yes, but we didn't know how it was going to turn out until we voted. How could you -- because we did vote affirmative and there was a challenge on it by the attorney, that's what raised the flat. But we shouldn't have heard the case in the beginning if that was the case, if we didn't have enough.

MS. SALAZAR: But you do have enough to make a decision.

COMMISSIONER GONZALES: We have enough to table it but not to approve.

MS. SALAZAR: No, you have enough to approve --

COMMISSIONER GONZALES: But it's too late now, right?

MS. SALAZAR: Chair, I do leave it to you to make the decision.

CHAIR MARTIN: To make the decision. I would consider this very much a learning experience for the Planning Commission under the new SLDC. Because we could have had a final decision if there had been one vote difference and there could have been an approval and it would not have been --

COMMISSIONER GONZALES: But even if we vote again, we already know how it is going to come out.

CHAIR MARTIN: Any advice from counsel?

MS. SALAZAR: I don't have any further advice.

MR. FRIEDMAN: Can the Commission members make a new motion to reconsider the vote? I think they can, there is still four of them.

MS. SALAZAR: Under our rules of order I do not see that that is apparent thing that can happen.

MR. FRIEDMAN: Just based upon the fact that when they voted they didn't know that four was the necessary vote for approval or denial.

MS. JENKINS: Per counsel's advice, she left it open for this body to make a new motion and that is available to you per your counsel's advice.

MS. SALAZAR: I guess the only answer is if you would like to hear from the County Attorney I can bring him in.

CHAIR MARTIN: Is he here?

MS. SALAZAR: Yes.

CHAIR MARTIN: Have you discussed this with him already?

MS. SALAZAR: I have.

CHAIR MARTIN: So I don't think we'll hear anything new.

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COMMISSIONER BOOTH: The public part of this is closed and I am kind of uncomfortable with all of this – I think we gave both counsels time to talk.

CHAIR MARTIN: Yes, both counsels had an opportunity to address –

MR. GRAESER: Madam Chair, with all due respect there have been a lot of comments made subsequent; if I could just respond to that?

CHAIR MARTIN: Okay.

MR. GRAESER: This is a quorum of this body. A quorum can make a decision. A quorum of this body decided not to accept the recommendation therefore not to approve the project.

[Outburst of disagreement coming from the applicants' agent and counsel]

CHAIR MARTIN: I'll hear from the County Attorney on this case.

GREG SHAFFER (County Attorney): Madam Chair, Commission members, Greg Shaffer, Santa Fe County Attorney responding to your request that I come and attend this part of the meeting. What can I do for you?

CHAIR MARTIN: Has the present been presented to you about the situation that we face?

MR. SHAFFER: I believe that it has, Madam Chair, but I would prefer to hear it from you to make sure we all starting from the same premises.

CHAIR MARTIN: So, there was a motion made and seconded for approval of the variances before us. We're missing our Chair he recused himself from this case and we have another vacancy. The motion was voted on and it was a vote of three to two to approve the motion. And that point, then, the attorney for those in opposition to the variance made a point of order about the fact that, as I understand it, the new SLDC requires a majority of all the members of the Planning Commission in order to approve a variance and there are seven members of the Planning Commission and that would be four – that would require four affirmative votes to approve that, to approve a variance; is that correct?

MR. SHAFFER: So, Madam Chair, I guess where I would start with is since there is no requirement, if I understand things correctly, that all the variances stand or fall together it may have been a better way to proceed to have each of the variances voted on separately and subject to a separate motion. It would seem to me that nonetheless the Planning Commission took action on the motion as it was presented. A motion to reconsider that action under these circumstances might be order and if that motion is acted upon then the Planning Commission could seemingly table the matter to the next meeting in the hopes of having another member appointed or present so that you could get two-four given the current makeup or you could go through and have a separate motion on each individual variance. It might not change the outcome but seemingly those would be some options to consider.

CHAIR MARTIN: Thank you. Yes, Commissioner Booth.

COMMISSIONER BOOTH: What I understand from what was read from the plan was that because it was three to two, it not only did not pass but that then constituted a denial of those three variances; is that correct or incorrect?

MR. SHAFFER: Madam Chair, member, my understanding of the law is that when you are dealing with an administrative body that must vote in the affirmative for something to happen. If something fails to get the requisite number of votes then the

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matter is denied because the applicant who bears the burden of proof failed to meet that burden to convince their requisite number of people to vote in their favor.

COMMISSIONER BOOTH: And in this case it would be four people out of the seven?

MR. SHAFFER: Madam Chair, this is an issue that candidly hasn't come up in my time at the County in terms of do you reduce the requisite number of the members since you have a voluntary recusal so you have six which would get you to four but you have a vacancy on the board. So that's something, is it a majority of six or majority of five –

CHAIR MARTIN: Mr. Shaffer, I misspoke. It is not a vacancy. We have another board member who did not come. There's no vacancy. There's actually seven members serving on the Board.

MR. SHAFFER: Okay, thank you for that clarification, Madam Chair. So then you would need four even if you reduced it from seven to six, since three is not a majority of all the members.

Again, to sum up, if you need four and you don't get it my understanding of the law is the requested relief is denied because the applicant failed to carry their burden of proof.

CHAIR MARTIN: Thank you. So I'll bring it back to the committee for action or not.

COMMISSIONER LOPEZ: Madam Chair, I make a motion to approve case number V16-5150 – oh, I'm sorry. V16-5150 Hearts Way Ranch variance for approval.

COMMISSIONER GONZALES: Second. Same motion.

CHAIR MARTIN: That's not the motion.

COMMISSIONER GRAY: I move to, Madam Chair, I move to reconsider our earlier vote and just table the matter until we have enough to make a quorum for a vote.

CHAIR MARTIN: Do you withdraw your motion?

MR. SHAFFER: As a point of order, the Board has already acted so the motion that was made is seemingly in proper because the Board has already voted –

CHAIR MARTIN: -- that's right this the same. This is essentially revoting the same.

MR. SHAFFER: -- so you would need to, it seems to me have a motion to reconsider that earlier vote.

COMMISSIONER GRAY: So I have –

CHAIR MARTIN: So you have a motion to reconsider the case?

COMMISSIONER GRAY: Correct.

CHAIR MARTIN: Is there a second to that motion? That motion dies for lack of a second.

COMMISSIONER LOPEZ: He seconded.

COMMISSIONER GONZALES: She made a motion to reconsider the vote that we did; right?

CHAIR MARTIN: Yes.

COMMISSIONER GONZALES: Let her make the motion again. I didn't understand it.

COMMISSIONER GRAY: Okay. Madam Chair, I make a motion to reconsider our earlier vote.

COMMISSIONER GONZALES: Second the motion.

COMMISSIONER LOPEZ: Okay, now do I have to make a motion to rescind?

COMMISSIONER GRAY: No.

CHAIR MARTIN: All those in favor of that motion please signify by raising your hand.

The motion passed by majority [3-2] vote with Chair Martin and Commissioner Booth voting against.

MR. SHAFFER: Now it seems to me that a motion to table would be in order to table the motion on the reconsideration. And you could table the action until you have your sixth member.

COMMISSIONER BOOTH: So because this is a learning experience that we're trying to figure this out. What I understood from the Sustainable – what you read was that four people were needed to change a variance.

CHAIR MARTIN: Four votes.

COMMISSIONER BOOTH: Four votes were needed to change a variance. This is not a change of variance this is just to reconsider so we only need three votes – a majority; is that correct?

MR. SHAFFER: That is correct. I am not telling the Board what to do but if you wanted to table the manner so that you would have six members present so that you could have the potential of another vote so you would have four votes in favor of the variances you could do that or you could proceed to –

COMMISSIONER GRAY: Madam Chairman, I motion that we table the manner until we have a sixth person to make that final vote.

COMMISSIONER GONZALES: I'll second it.

CHAIR MARTIN: The motion is seconded. Let me for a point of clarification, this does not mean a whole new public hearing. When we have a sixth member there would just be a vote; is that my understanding?

MR. SHAFFER: That's correct. It would be based upon the record submitted and made. The only clarification is that it would be a motion to table and our rules of order provide that it can only carry over for a few meetings. So if you don't have that sixth member then ultimately the Board would have to – it can't be out indefinitely. I think it would be a motion to table, if I could.

MS. JENKINS: May I offer something on the motion? May I be heard on the motion?

CHAIR MARTIN: No, no.

MS. JENKINS: Okay.

CHAIR MARTIN: So all those in favor to table signify by raising your hand. All those opposed. The motion carries. [3 to 2 vote.]

And now we're on to the --

COMMISSIONER BOOTH: May I ask one last question?

CHAIR MARTIN: One last question.

COMMISSIONER BOOTH: Could I ask one last question? Excuse me, excuse me. I'd like to ask one last question. So, how will this work. We will have a member who will not have been at this public hearing. Will we now have it at the next meeting that we will have another vote on it without going through public hearing just based on record?

CHAIR MARTIN: Yes.

COMMISSIONER BOOTH: I just want to hear that publicly, you know.

MR. SHAFFER: That is correct and that is consistent with how the County has handled matters when a member is present at a future meeting we don't redo the public hearing. The vote is made upon the record that is presented and my understanding is that that process is allowed by law.

COMMISSIONER BOOTH: Good. I just wanted to get that out.

CHAIR MARTIN: Okay, thank you.

B. Presentation on Proposed Changes to the Suitable Land Development Code and Development Review Fee Ordinance

Penny Ellis-Green, Growth Management Director, said this is an informational item and advised the Commission that when the SLDC was approved the BCC requested that staff provide technical changes following a six month period of code implementation. In July, staff provided suggested changes to the BCC and additional changes on September 13th. She explained the editing method and said staff intends to go back to the BCC on September 27th and request authorization to publish title and general summary which is the legal proceeding prior to taking action. The draft SLDC will be presented to this body on October 20th for a public hearing and recommendations that will be forwarded to the BCC. The BCC will hold two public hearings in November.

Ms. Ellis-Green said if the changes are approved, it would be effective 30 days following action. The Planning Commission will be presented the entire SLDC restated. She highlighted a few of the changes as follows: setback variances, water harvesting variances, small-scale sand and gravel with setbacks to residential uses and a two-year timeframe, and the category on the use table regarding commercial and personal horse uses. Another major change will be within the sign section to reflect recent case law.

The County has developed a database/spreadsheet showing who requested what change(s) and whether or not the proposal is accepted by staff. At this point there are no major policy shifts, rather technical changes.

Commissioner Booth thanked and congratulated staff for their work on the SLDC.

In the event the Planning Commission was not prepared to take action on the SLDC, Ms. Ellis-Green requested a special meeting be held to maintain the BCC schedule.

C. Petitions from the Floor

None were offered.

D. Communications from the Committee

None were presented.

E. Communications from the Attorney

None were presented.

F. Matters from Land Use Staff

None were presented.

G. Next Planning Commission Meeting: October 20, 2016

H. Adjournment

Having completed the agenda and with no further business to come before this Committee, Vice Chair Martin declared this meeting adjourned at approximately 7:10 p.m.

Approved by:

Frank Katz, Chair
Planning Commission

Submitted by:

Karen Farrell, Wordswork

V. **APPROVAL OF MINUTES: September 15, 2016**

Vice Chair Martin advised the Commission that she provided the recorder with a few changes. Those changes were incorporated in the recorded minutes. No other changes were offered.

Commissioner Anaya moved to approve the September minutes as amended. Commissioner Booth seconded and the motion passed by unanimous voice vote.

VI. **NEW BUSINESS**

- A. **CASE # V 16-5150 Hearts Way Ranch Variance: Heart's Way Ranch, Susan Carter, Applicant, JenkinsGavin, Design & Development Inc., Agents, request three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of two casitas, a yoga area, and a main residence on 39.5 acres. The Applicant requests a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent, a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10 percent in three separate locations in order to get to the casitas and main residence, and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East, Commission District 4, SDA-3 – DELIBERATION AND VOTE ONLY**

[Exhibit 1: Hays & Friedman, PA, letter dated 10/19/16; Exhibit 2: Graeser & McQueen, LLC, dated 10/17/6]

ANDREA SALAZAR (Assistant County Attorney): Before we start, I just want to address two letters that I handed to you. Chair and Planning Commission members there were two letters that were sent to the County Attorney's office, one from attorney Graeser and one from attorney Friedman. There are copies for the public if they'd like to see the letters; they're in the back of the room.

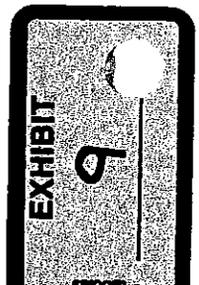
Today we have the deliberation and vote for case V 16-5150 and these basically address whether the procedure at the last meeting, September 15th meeting, was correct. I wanted to let you review the letters first before I start talking about the procedure.

COMMISSIONER MARTIN: Actually, I don't think we've seen the Hays & Friedman, at least I didn't see it in my packet. So if you could give us more than a minute.

MS. SALAZAR: Okay.

COMMISSIONER MARTIN: Have all the members had time to read the material? Okay, thank you.

MS. SALAZAR: Chair, Commission members, I would like to focus on three points. One is that voting on a variance is different than voting on any other case under the SLDC. Second is that the rules of order do not directly address voting for a variance or memorialize what happens if there is a vote of 3 to 2 under a variance. The



third is that we should be reviewing both of these letters and the procedure with the overarching concepts that are talked about and at the heart of the Open Meetings Act and our rules of order which is public notice to those affected by the case and fundamental fairness.

So when we're talking about the first part which is variances under the SLDC you have to have a majority of the Planning Commission vote in approval of a variance. So that means that four people have to approve a variance. It can't be the two to three situation that happened last time.

Now, the rules of order don't address that. Rather the most similar to that is when there is a tie vote, and so under the rules of order, if there is a tie vote and one member of the Planning Commission is not in attendance, then a tie vote would be tabled and it would be moved to the next meeting which is when all of the members could vote on that. And under the scenario that is addressed in Mr. Graeser's letter it is almost asking that even through this variance did have 3 to 2 votes but didn't pass that we would treat it worse than if there were equal votes or tie votes. And that doesn't sound like it would have fundamental fairness.

Also, in respect to the motion to reconsider and to whether the section under the County rules of order address this; we should look at the majority as being the majority of the number of votes. So under this scenario, even though it doesn't directly address the variance criteria, it talks about who has the majority of votes and that would be the prevailing party. So in this scenario there were 3 to 2 votes and technically the prevailing body would be the more votes cast. And Ms. Gray was part of the prevailing party and she did make the motion to reconsider and then made the motion to table the case. In looking at the rules of order that seems to be fundamentally fair as to how those votes were cast.

Also suggested in the motion to reconsider as whether there was enough notice given. Now, all of the members of the community who were noticed to be present have been present at the meetings and at the last meeting we did have opposition and we did have support and all of those members were here and they heard exactly what the deliberations and what the public hearing was and what votes did happen and didn't happen and they were also told that this was going to be tabled and that there would be deliberations and voting at the next meeting. So it seems that we did go through the process and it seems almost absurd to have had the motion to reconsider on the September 15, 2016 agenda because we didn't know it was going to happen. But everyone who was involved in the motion or involved in the case was present and did hear what happened and hopefully is now here at this meeting so that they know this is going to be a vote and a reconsideration. So in terms of that, it seems that notice was fairly given and we did discuss it, the County Attorney and myself were present talking about the procedures.

The third point I'd like to make is that we really should be looking at this with fairness in mind and we shouldn't be inconsistent with our rules of order. So we shouldn't be outside of the scope of what would happen with a tie or what notice should be given. So under those criteria it seems to be that the process was correct.

Those are my final points. And I do want to remind both – everyone here and the Planning Commission that we do not have any more public hearing so there is no more new evidence. This was a procedural question that did come up so now you can move to vote and deliberation.

COMMISSIONER GRAY: I move we go into executive session to deliberate on this case as allowed by NMSA 1978, 10-15-1(H)(2).

COMMISSIONER GONZALES: Second.

The motion to go into executive session pursuant to NMSA 1978, Section 10-15-1 (H) (2) to discuss the matters delineated above passed by unanimous roll call vote as follows:

Commissioner Anaya	Aye
Commissioner Gray	Aye
Commissioner Martin	Aye
Commissioner Booth	Aye
Commissioner Gonzales	Aye
Commissioner Lopez	Aye

[The Commission met in executive session from 4:10 to 4:25.]

COMMISSIONER MARTIN: I understand that it was unclear what we were doing and the audience couldn't hear. So I'd like to tell you that under the general advice of counsel we went into executive session to deliberate in private. This is legally allowed according to our counsel.

The rules of this is that a member of the Planning Commission must move for the Commission to conduct deliberation in closed session as follows, we took the roll call vote, we deliberated. The next item is that we returned to the BCC chambers and I'm waiting for a motion.

COMMISSIONER GRAY: Chair Martin, I make a motion that we come out of executive session.

COMMISSIONER ANAYA: Second.

The motion passed by unanimous voice vote.

CHAIR MARTIN: And this explains that the only item discussed in executive session was the Heart's Way Ranch case and our vote on the pending motion to approve the variances must be made in the public meeting. So do I hear a motion on this variance?

COMMISSIONER ANAYA: Mr. Chair.

COMMISSIONER MARTIN: Yes.

COMMISSIONER ANAYA: Just a comment before the vote please.

COMMISSIONER MARTIN: Committee member Anaya, yes.

COMMISSIONER ANAYA: Okay. I was not present for the last meeting last week [sic] due to health issues of my father. So I apologize for this causing all this ruckus that we're in right now. But I am fully aware of what's going on on this particular item. I did watch the video that Santa Fe County has and I read the notes and if anybody would like to come and see my chicken scratch they're more than welcome too. So I am not making this vote out of the blue. Madam Chair.

COMMISSIONER MARTIN: Thank you, Commissioner Anaya. Is there a motion on case V 16-5150 Heart's Way Ranch?

COMMISSIONER LOPEZ: Madame Chair.

COMMISSIONER MARTIN: Yes, Commissioner Lopez.

COMMISSIONER LOPEZ: I make a motion that case number V 16-5150 Heart's Way Ranch variance be approved.

COMMISSIONER MARTIN: Is there a second?

COMMISSIONER GRAY: I second.

COMMISSIONER MARTIN: Commissioner Gray seconds. May we have a roll call vote on this.

Commissioner Anaya	Aye
Commissioner Gray	Aye
Commissioner Booth	Nay
Commissioner Gonzales	Aye
Commissioner Lopez	Aye

COMMISSIONER MARTIN: The motion carries. Okay, I think we have our Chair here.

[Chair Katz assumed the role of Chairman.]

B. Possible Action on the Findings of Fact and Conclusions of Law for Case #V 16-5150 Heart's Way Ranch

CHAIR KATZ: The next item on the agenda is the possible action on the findings and conclusions and I guess that is attached to the material. Is there a proposed findings and conclusions?

MS. LUCERO: Mr. Chair, there is an attached findings and conclusion to the packet it is after the case itself. It is a separate item.

CHAIR KATZ: Okay, so is there a motion to adopt the findings and conclusions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIR KATZ: Yes, Mr. Anaya.

COMMISSIONER ANAYA: I'll make a motion in two seconds. I'd like to make a motion to approve the order for finding in case number V 16-5150.

CHAIR KATZ: Okay, is there a second?

COMMISSIONER GRAY: I second.

CHAIR KATZ: Anyone want to discuss it?

The motion passed by majority 4-2 voice vote with Commissioners Booth and Martin voting against.

CHAIR KATZ: Four ayes and two nays, that order is adopted.

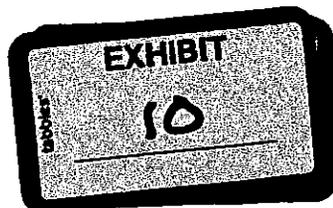
C. Review and Recommendation to the Board of County Commissioners on Text Amendments to the Santa Fe County Suitable Land Development Code Initiated by the Land Use Administrator – Entire Code on file with Land Use Dpt.

CASE NO. V16-5150
Heart's Way Ranch, Susan Carter, Owner, Applicant

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on August 25, 2016, on the application of Heart's Way Ranch, Susan Carter, Owner (Applicant) for Three Variances: a Variance of Chapter 7, Section 7.11.6.6 to Allow the Grade of the Approach at the Intersection to Exceed 5%; Chapter 7.11.2, Table 7-13, to Allow the Overall Grade of the Driveway to Exceed 10%; and 7.11.2 Table 7-13 – Local Road Design Standards to Allow Access from Offsite Roads That Do Not Meet Code, of the Sustainable Land Development Code (SLDC). The Applicant proposes a Retreat Facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres (Property). The site is zoned as Rural Fringe (RUR-F). Appendix B of the SLDC designates a retreat as a permitted use within the RUR-F Zoning District. The Property is located at 34 Sendero De Corazon, Via La Barbaria Trail, within Township 16 North, Range 10 East, Section 9 (Commission District 4). The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the request, finds that the application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. On May 27, 2016, the Applicant submitted their application for the variances.
2. As required by the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on May 19, 2016, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1.



2025 RELEASE UNDER E.O. 14176

3. Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of the hearing on the Application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the Property, beginning on August 10, 2016. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 10, 2016, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject Property and a list of persons sent a mailing is contained in the record. Staff prepared the sign for posting on the Property and will review its sufficiency and whether a second sign is warranted prior to the Planning Commission hearing.

4. The site is within the Rural Fringe Zoning District and is zoned as Rural Fringe (RUR-F). Appendix B of the SLDC designates a retreat as a permitted use within the RUR-F Zoning District. The Property is located at 34 Sendero De Corazon, via La Barbaria Trail, within Township 16 North, Range 10 East, Section 9 (Commission District 4).

5. The following SLDC provisions are applicable to this case:

A. Chapter 7, Section 7.11.6.6 provides:

Grades at the approach of intersections shall not exceed five percent (5%) for one hundred (100) linear feet prior to the radius return of the intersection, excluding vertical curve distance.

B. Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-3) requires a 10% or less grade for the driveway to the Property

C. Chapter 7, Section 7.11.2, Table 7-13, Local Road Design Standards, requires offsite roads to have a 20' driving surface.

D. Chapter 14, Section 14.9.7.1, Variances, Purpose, states:

The purpose of this section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code

SPC CLERK RECORDED 08/02/2018

where, due to extraordinary and exceptional situations or conditions of the Property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

E. Chapter 14, Section 14.9.7.4, Variances, Review criteria states:

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

1. where the request is not contrary to public interest;
2. where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

F. Chapter 14, Section 14.9.7.5 Variances, Conditions of approval states:

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of Property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the Applicant takes affirmative action consistent with the approval.

6. In support of the requested variances, the Applicant provided responses as follows:

1) The request is not contrary to the public interest in that the private driveway which will be used primarily by the Property owners for access to the single family residence at the easternmost end of the drive, and by four to six retreat guests to access the two casitas that will provide overnight accommodations, was constructed pursuant to previous code

requirements, has fire protection measures already constructed and the proposed use will be a decrease in intensity.

2) Owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant in that the Property comprises very steep terrain and compliance with the SLDC grade requirements for the driveway would excessively damage the terrain and be prohibitively expensive and it would cause unnecessary hardship (and perhaps not be possible) to widen the access road (La Barberia Trail) or reduce the road grade at the intersection.

3) The spirit of the SLDC is observed and substantial justice is done by minimizing adverse environmental impacts that any reduction in driveway grade would cause while satisfying requirements for emergency access and life safety. The variance request observes the spirit of Section 1.4.2.11 of the SLDC which encourages local small businesses in order to support a balanced, vigorous economy.

7. Staff recommended denial of the requested variances.

8. At the public hearing, there was testimony both for and against the requested variances. In support, there was testimony in regard to the need for the business, the soundness of the Applicant, the adequacy of La Barberia Trail and of the driveway serving the Property. In opposition, there was testimony as to the alleged legal insufficiency of the variance requests, the inadequacy of La Barberia Trail, the fire hazard in the area and related matters.

The Hearing Officer finds:

1. Based on the application and the evidence and testimony presented at the public hearing as described herein, the use for which the variance is requested:

A. is not contrary to public interest;

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B. Owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant; and

C. Granting the variance will result in the spirit of the SLDC being observed and substantial justice done.

2. An extraordinary and exceptional situation has been demonstrated due to the steep terrain of the Property and the avoidance of scarring of the hillside to reconstruct the driveway, which is well constructed and contains fire protection measures including pull-out areas and two 10,000 gallon water storage tanks; it would be difficult or impossible to widen La Barberia Trail (and prohibitively costly) or to change the grade of the intersection of La Barberia Trail as it is an existing road constructed many years ago with inadequate easement; and denying the variance requests would hinder the spirit of the SLDC in fostering local businesses.

3. The conditions for approval of the requests are recommended as follows:

a. The turnouts and turnarounds of the driveway shall be maintained as approved by the County with an all-weather driving surface and with an un-obstructed vertical clearance of 13'-6"; and

b. The driveway shall meet a minimum 28' inside radius on curves.

c. The entrance gate at the top of Sendero Del Corazon shall be set to open further to allow for the increased turn and radius into the Casita B driveway.

d. Due to the potential access issues and remote location of this project, for life safety and property protection, the Applicant shall install Automatic Fire Protection Sprinkler systems meeting NFPA13R requirements in Casitas A&B.

NBA-102

SFC CLERK RECORDED 08/31/2016

- e. The Applicant shall comply with all applicable regulations within SFC Ordinance 2001-11/EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such area.
- f. The Applicant shall have a vegetation management plan as required by the Urban Interface Fire Code 2001-11 for approval by the County.

WHEREFORE, the Hearing Officer recommends approval of a Variance of Chapter 7, Section 7.11.6.6 to Allow the Grade of the Approach at the Intersection to Exceed 5%; Chapter 7.11.2, Table 7-13, to Allow the Overall Grade of the Driveway to Exceed 10%; and 7.11.2 Table 7-13 – Local Road Design Standards to Allow Access from Offsite Roads that do not meet code, all of the Sustainable Land Development Code (SLDC), subject to the recommended conditions of approval.

Respectfully submitted,

Nancy R. Long
 Nancy R. Long
 Hearing Officer

Date: 8-31-16

COUNTY OF SANTA FE)
 STATE OF NEW MEXICO) ss SLDC HEARING OFFICER 0
 PAGES: 6

I Hereby Certify That This Instrument Was Filed for Record On The 2ND Day Of September, 2016 at 09:34:54 AM And Was Duly Recorded as Instrument # 1803542 Of The Records Of Santa Fe County

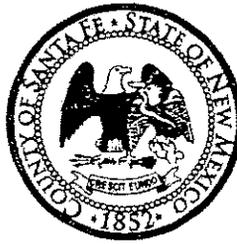
Witness My Hand And Seal Of Office
 Deputy *Laura Hernandez* County Clerk, Santa Fe, NM Geraldine Salazar



Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. APP 16-5151
HEARTS WAY RANCH APPEAL
RICHARD BANK APPELLANT**

ORDER

THIS MATTER came before the Santa Fe County Board of County Commissioners (BCC) for hearing on January 10, 2017, on the Appeal of Richard Bank, (Appellant) appealing the Santa Fe County Planning Commission's decision to grant Heart's Way Ranch, Susan Carter, Property Owner, JenkinsGavin, Design & Development Inc., Agents, three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres. The three variances are of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%, Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence, and Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East (Commission District 4), SDA-3

The BCC, having reviewed the Application, staff report, the Hearing Officer's recommendation, and the Planning Commission's decision and having conducted a public hearing on the Application, finds that the Application is well-taken and should be approved and makes the following findings of fact and conclusions of law:



1. The Commission hereby adopts in its entirety of the Hearing Officer's Recommended Decision and Order attached hereto as Exhibit A; and
2. The Application to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres with a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads is approved subject to the conditions memorialized in the Hearing Officer's Recommended Decision and Order.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2017.

THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

Henry P. Roybal, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney



JENKINSGAVIN
LAND USE | PROJECT MANAGEMENT

December 28, 2016

The Board of County Commissioners
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

**RE: Heart's Way Ranch
Appeal Response**

Dear Honorable Commissioners:

I am writing on behalf of Susan Carter and Dr. Shari Scott, PhD, the applicants in the Heart's Way Ranch request. This letter shall serve as our response to the assertions and inaccuracies in the appeal of our Planning Commission approval filed by Richard Bank.

Project Summary

Heart's Way Ranch is a proposed sober-living wellness retreat offering an intimate, safe, healing environment for four to six women who have completed treatment and are seeking a strong transitional program to access the necessary support to make and maintain the life changes they are seeking. The 39.57-acre subject property is in La Barbara Canyon in SDA-3 and is zoned Rural Fringe. Per the SLDC Use Matrix, Retreats are a permissible use in the Rural Fringe zoning district. A Site Development Plan application has been reviewed and approved by the Growth Management Department, which included an application for three variances to the roadway standards. The Hearing Officer recommended approval of these variances on August 25, 2016 and the Planning Commission approved the variance requests on October 20, 2016.

Appeal Response

For your convenience, our responses below are organized to correspond with the appeal document submitted by Mr. Bank.

Overview

In the first paragraph, Mr. Bank references County staff's recommendation of denial of the variance requests and that this "should carry significant weight". While staff's recommendations are of course relevant, it is important to point out that it has been a longstanding policy of the Land Use Department to **always** recommend denial of variances. Therefore, it should be noted that the Land Use Department recommendation was issued within this customary context. In addition, in a memo dated July 18, 2016,



the Planning Division recommended approval of the variances, stating, "...*the proposed conversion will produce negligible traffic impacts...*". Furthermore, and more importantly, in their letter dated September 7, 2016, the Fire Prevention Division approved the project with the condition that automatic fire suppression (sprinkler) systems be installed in the dwellings.

Since variances are not eligible for administrative (staff) approval, what is most significant are the recommendations for approval issued by the Hearing Officer and the subsequent approval by the Planning Commission. Lastly, I do not support Mr. Bank's assertion that staff are the only "neutral experts with no vested interests". This is an unjust characterization implying that the Hearing Officer and the Planning Commission are somehow biased and less qualified to render such land use decisions.

1.a. Unsafe Roads

Section 7.11.6.6 related to the grade of the approach at intersections only pertains to roads (in this case, the intersection of La Barbaria Trail and Camino Tortuga) and does not apply to driveways (Sendero de Corazon). Therefore, a variance from this section is not required for the intersection of Camino Tortuga and Sendero de Corazon.

La Barbaria Trail has been serving the area for over 30 years and is in excellent condition. Land Use staff, Mr. Bank's "neutral experts", determined that the only variance required related to the width of the existing easement and roadway. The County has considered La Barbaria Trail adequate access for the numerous subdivisions and building permits that have been approved in the area over the years. And since the proposed retreat is not an intensification of use, there is no evidence to support the assumption that La Barbaria Trail is somehow inadequate to continue serving the area.

1.b. Traffic

We have continually maintained that that the proposed retreat is not an intensification of use and will not result in an increase in traffic, which is supported by the attached data prepared by Walker Engineering. Mr. Walker provides the traffic generation of the three existing dwellings as established by the Institute of Traffic Engineers (ITE) and compares this to the traffic generation of the main residence and the retreat casitas. Since the ITE does not include "retreat" as a designated land use category, Mr. Walker utilizes "resort hotel" as the closest approximation. As you can see, the A.M. and P.M. Peak Hour vehicle trips are identical. And since the retreat guests will not have their own vehicles, the trip generation will clearly be less than what is shown in the ITE results.

Important Clarification: When Ms. Carter was questioned at the Planning Commission hearing regarding future plans to improve or expand the property, her response of "not right now" pertained to the potential for some minor renovations of the main residence and in no way referred to any plans to expand the retreat use.

1.c. Fire Danger

There is absolutely no evidence that the proposed residential retreat poses an increased fire risk. On the contrary, the Heart's Way Ranch property is among the safest in the area. Existing fire safety measures include two 10,000 gallon water storage tanks connected to a draft hydrant and the access drive (Sendero de Corazon) is constructed with five pull-out areas along the driveway to permit vehicles to pass one another. Each pull-out area is a minimum of 10 feet wide and 70 feet long in compliance with Fire Code requirements. There is also an emergency turnaround area at the top of the driveway at the main house. Furthermore, the main house and the casitas will be retrofitted with automatic fire suppression systems. Although portions of the driveway exceed a 10% grade, **the site conditions have been inspected by the Fire Marshal and he has approved the access in consideration of the existing and proposed on-site fire protection systems, as well as the above described pull-out areas and turnaround.**

In the third paragraph on page 7, Mr. Bank states, "Wildfire, not a structure fire, is the real danger here." We find this assertion to be short-sited and limited. The prevention of structure fires is of utmost importance, as any structure burning can pose a serious risk of wildfire. The applicants' ongoing attention and concern for fire safety measures conveys their own respect and reverence for the precious resources of the forest landscape on their own and surrounding properties. When there is protection of manmade structures, there is ultimately protection of the forest.

Lastly, Mr. Bank's assertion that the retreat guests will inevitably be smokers who will, of course, carelessly toss lit cigarettes into the forest is extreme conjecture and is in no way based in fact, scientific or otherwise. The Heart's Way Ranch property is and will be non-smoking and this regulation will be strictly enforced. A person who chooses to smoke would not choose a non-smoking property on which to stay when there are many other options that allow a person that option. Obviously, a potential guest who smokes will NOT choose to stay at the Ranch. Just as smokers will not choose to stay at a non-smoking hotel, the same logic holds true in this situation.

2.c. Exceptionality

Section 14.9.7 of the SLDC states that the purpose of variances is "*...to provide a mechanism ... that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner.*" The exceptional conditions of the property relate to the mountainous terrain. The existing driveway was sensitively constructed to minimize slopes, while working within the constraints of the terrain. Reconstructing the driveway to comply with the grade requirements of the SLDC would result in excessive damage to the natural terrain, loss of vegetation, and would also be prohibitively expensive. This is best stated on page 5 of the Planning Commission's

Final Order, which states, "*An extraordinary and exceptional situation has been demonstrated due to the steep terrain of the Property and the avoidance of scarring of the hillside to reconstruct the driveway, which is well constructed and contains fire protection measures...; it would be difficult or impossible to widen La Barberia Trail (and prohibitively costly) or to change the grade of the intersection of La Barberia Trail as it is an existing road constructed many years ago with inadequate easement; denying the variance requests would hinder the spirit of the SLDC in fostering local businesses*".

In conclusion, **we respectfully ask the Board to uphold the thoroughly inspected and reviewed approval of the Hearing Officer and the Planning Commission.** These variance requests **were approved** in the interest of protecting the residents, the natural environment, mitigating excessive roadway construction, and in the interest of supporting this worthwhile Rural Fringe approved land use endeavor.

Thank you.

Sincerely,

JenkinsGavin, Inc.



Jennifer Jenkins

cc: Vicki Lucero, Santa Fe County
John Salazar, Santa Fe County
Susan Carter
Dr. Shari Scott
Gary Friedman, esq.



Walker Engineering

Morey Walker & Associates Engineering, Inc.

905 Camino Sierra Vista
Santa Fe, NM 87505
(505) 820-7990

December 28, 2016

Ms. Jennifer Jenkins
JenkinsGavin Inc.
130 Grant Avenue, Suite 101
Santa Fe, New Mexico 87501

Ref: Hearts Way Ranch
Traffic Generation Assessment

Dear Jennifer,

At your request, Walker Engineering has conducted a review of the potential traffic generation at the referenced project. We reviewed the Institute of Traffic Engineers (ITE) trip generation manual and there is no direct comparable land use for a retreat. The land use that would be most comparable would be a resort hotel.

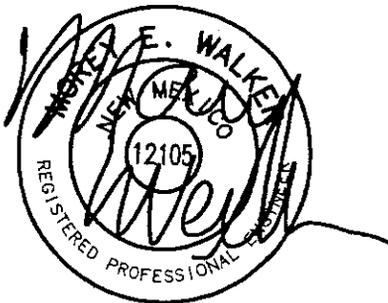
To estimate the traffic impact from the Hearts Way Ranch, we review a 3-residential unit traffic generation vs a single residential and a 4-room resort traffic generations. From this analysis, the traffic generated during the AM (2 trips) and the PM (3 trips) are identical (see attached summaries) whether the Ranch is residential or a retreat.

If you have any questions in this matter, please do not hesitate to contact us.

Sincerely,
Walker Engineering

Morey Walker

Morey E. Walker, P.E.
Principal



Summary of Trip Generation Calculation
 For 3 Dwelling Units of Single Family Detached Housing
 December 21, 2016

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	9.57	3.69	1.00	29
7-9 AM Peak Hour Enter	0.19	0.00	1.00	1
7-9 AM Peak Hour Exit	0.56	0.00	1.00	2
7-9 AM Peak Hour Total	0.75	0.90	1.00	2
4-6 PM Peak Hour Enter	0.64	0.00	1.00	2
4-6 PM Peak Hour Exit	0.37	0.00	1.00	1
4-6 PM Peak Hour Total	1.01	1.05	1.00	3
Saturday 2-Way Volume	10.10	3.68	1.00	30
Saturday Peak Hour Enter	0.51	0.00	1.00	2
Saturday Peak Hour Exit	0.43	0.00	1.00	1
Saturday Peak Hour Total	0.94	0.99	1.00	3

Note: A zero indicates no data available.
 Source: Institute of Transportation Engineers
 Trip Generation, 7th Edition, 2003.

TRIP GENERATION BY MICROTRANS

Summary of Trip Generation Calculation
 For 1 Dwelling Units of Single Family Detached Housing
 December 21, 2016

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	9.57	3.69	1.00	10
7-9 AM Peak Hour Enter	0.19	0.00	1.00	0
7-9 AM Peak Hour Exit	0.56	0.00	1.00	1
7-9 AM Peak Hour Total	0.75	0.90	1.00	1
4-6 PM Peak Hour Enter	0.64	0.00	1.00	1
4-6 PM Peak Hour Exit	0.37	0.00	1.00	0
4-6 PM Peak Hour Total	1.01	1.05	1.00	1
Saturday 2-Way Volume	10.10	3.68	1.00	10
Saturday Peak Hour Enter	0.51	0.00	1.00	1
Saturday Peak Hour Exit	0.43	0.00	1.00	0
Saturday Peak Hour Total	0.94	0.99	1.00	1

Note: A zero indicates no data available.
 Source: Institute of Transportation Engineers
 Trip Generation, 7th Edition, 2003.

TRIP GENERATION BY MICROTRANS

Summary of Trip Generation Calculation
 For 4 Rooms of Resort Hotel
 December 21, 2016

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	0.00	0.00	1.00	0
7-9 AM Peak Hour Enter	0.22	0.00	1.00	1
7-9 AM Peak Hour Exit	0.09	0.00	1.00	0
7-9 AM Peak Hour Total	0.31	0.57	1.00	1
4-6 PM Peak Hour Enter	0.18	0.00	1.00	1
4-6 PM Peak Hour Exit	0.24	0.00	1.00	1
4-6 PM Peak Hour Total	0.42	0.65	1.00	2
Saturday 2-Way Volume	0.00	0.00	1.00	0
Saturday Peak Hour Enter	0.00	0.00	1.00	0
Saturday Peak Hour Exit	0.00	0.00	1.00	0
Saturday Peak Hour Total	0.00	0.00	1.00	0

Note: A zero indicates no data available.
 Source: Institute of Transportation Engineers
 Trip Generation, 7th Edition, 2003.

TRIP GENERATION BY MICROTRANS

